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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODE

AMENDMENT

STATE AGENCY:

California Environmental Protection Agency

MULTI-COUNTY:

California Utility Buyers Joint Powers Authority

A written comment period has been established commencing on **March 1, 2002**, and closing on **April 15, 2002**. Written comments should be directed to the Fair Political Practices Commission, Attention: **Kevin S. Moen**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed amendment to the conflict of interest code will be submitted to the Commission's Executive Director for his review, unless any interested person, or his or her duly authorized representative, requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed amendment will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced amendment to the conflict of interest code, proposed pursuant to Government Code section 87300, which designates, pursuant to Government Code section 87302, employees who must disclose certain investments, interests in real property, and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the amendment to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments, or comments, in writing to the Executive Director of the Commission, relative to review of the proposed amendment to the conflict of interest code. Any written comments must be received no later than **April 15, 2002**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses, or small businesses.

AUTHORITY

Government Code sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to **Kevin S. Moen**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Kevin S. Moen**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture is proposing to take the action described in the Informative Digest.

A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period **which ends at 5:00 p.m. on April 15, 2002.**

Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 407, 19227, 19228, 19315 of the Food and Agricultural Code, and section 15376 of the Government Code, and to implement, interpret or make specific sections 19227, 19228, and 19315 of the Food and Agricultural Code and section 15376 of the Government Code, the Department of Food and Agriculture is considering changes to Division 2 of Title 3 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

- 1) Food and Agricultural Code section 19227(a) specifies that the Department of Food and Agriculture may charge each licensed renderer and collection center a fee necessary to cover the costs of administering Article 6 (commencing with section 19300) and Article 6.5 (commencing with section 19310). The additional fees to be imposed authorized by this section may not exceed \$3,000 per year per each licensed rendering plant or collection center. Section 19227(b) specifies that the Secretary may fix different fees for renderers and collection centers and shall also fix the date the fee is due and the method of collecting the fee.

No regulations exist to implement section 19227(a) and (b). Therefore, this proposal would establish the enforcement fees, and the method for collection, for licensed renderers and collection centers.

- 2) Section 19315(a) specifies that the Department of Food and Agriculture may charge a fee necessary to cover the costs of administering this article. The fee charged pursuant to this section shall not exceed \$300 per year per vehicle, and not exceed \$3,000 per year per registered transporter. Section 19315(b) specifies that the Department may fix the date the fee is due and a method for collection for transporters of inedible kitchen grease.

No regulations exist to implement section 19315(a) and (b). Therefore, this proposal would establish the enforcement fees, and the method for collection, for transporters of inedible kitchen grease and the cost per vehicle.

- 3) Pursuant to the Permit Reform Act (Government Code section 15376), the Department of Food and Agriculture is also proposing to amend section 300(c) to include the actual processing times for applications for licensure/registration and renewal for a renderer license, collection center license, and inedible kitchen grease transporter registration.

FISCAL IMPACT STATEMENTS

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Department of Food and Agriculture has made an initial determination that the proposed regulatory action would not have any adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses: The Department of Food and Agriculture has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Costs Impact on Private Persons or Entities: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Department of Food and Agriculture has determined that the proposed regulations would affect small businesses. However, there is no negative impact upon businesses, as this proposal establishes fee amounts significantly less than the statutory limits and represents a decrease in the fee amounts currently collected by the Department.

CONSIDERATION OF ALTERNATIVES

The Department of Food and Agriculture must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Department of Food and Agriculture, 1220 N Street, Room A-116, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries concerning the substance of the proposed regulations are to be addressed to the following:

Name: Douglas Hepper, D.V.M
Address: Department of Food and Agriculture
Meat and Poultry Inspection
1220 N Street, Room A-114
Sacramento, CA 95814

Telephone No.: (916) 657-5295
Fax No.: (916) 654-2608
E-mail address: DHepper@cdfa.ca.gov

The backup contact person is:

Name: Nancy Grillo, Associate Analyst
Address: Department of Food and Agriculture
1220 N Street, Room A-116
Sacramento, CA 95814

Telephone No.: (916) 651-7280
Fax No.: (916) 653-4249
E-mail address: NGrillo@cdfa.ca.gov

Written comments, facsimiles or e-mails regarding this proposal are to be addressed to the following:

Name: Nancy Grillo, Associate Analyst
Address: Department of Food and Agriculture
1220 N Street, Room A-116
Sacramento, CA 95814

Telephone No.: (916) 651-7280
Fax No.: (916) 653-4249
E-mail address: NGrillo@cdfa.ca.gov

Website Access: Materials regarding this proposal can be found at <http://www.cdfa.ca.gov>

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to amend Sections 1380.19 (n), (q), (r), and (t), 1436.38 (a) and (b), 1446.7, 1454.14 and 1462.15 of the regulations in Title 3 of the California Code of Regulations pertaining to standard containers for table grapes, nectarines, peaches, and plums and fresh prunes (hereinafter referred to as plums).

Notice is also given of a written public comment period. Any interested person may present statements or arguments in writing relevant to the proposed regulation until 4:30 p.m. on April 17, 2002. Please refer to the contact section of this notice for the contact persons and address information when submitting comments.

A public hearing is not scheduled but will be if any interested person, or his or her duly authorized representative, submits a written request for public hearing to the Department no later than 15 days prior to the close of the written comment period. Following

the public hearing (if one is requested) or following the written comment period (if no public hearing is requested), the Department of Food and Agriculture, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Section 1380.19, subsections (n), (q), (r), and (t) describes the dimensions for existing standard containers for table grapes, nectarines, peaches, and plums, respectively.

Existing Sections 1436.38 (a) and (b), 1446.7, 1454.14, and 1462.15 provides that table grapes, nectarines, peaches, and plums, respectively, shall be in one of several specified standard containers.

This proposal would amend the above sections by adopting new standard container 38M for table grapes, and by adopting new standard container 35 for nectarines, peaches, and plums, with each container having specified dimensions, including inside depth, outside width, and outside length.

FISCAL IMPACT STATEMENTS

The Department has initially determined that these proposed regulations will have no effect on savings or increased costs to any state agency, no costs under "Part 7 (commencing with Section 17500) of Division 4" of the Government Code to local agencies or school districts requiring reimbursement, no other nondiscretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the State will result from these proposed regulations. The Department determined that these proposed regulations do not impose a mandate on local agencies or school districts.

EFFECT ON SMALL BUSINESS

The Department has initially determined that these proposed changes in the regulations would affect small businesses.

EFFECT ON HOUSING COSTS

The Department has initially determined that the amendments of the proposed regulation will have no affect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has initially determined that these proposed changes would have no statewide adverse economic impact directly on businesses, including the ability for California businesses to compete with businesses in other states.

ASSESSMENT STATEMENT

The Department has initially determined that the proposed changes in the regulations would not affect the creation or elimination of jobs in California and would neither create nor eliminate or expand existing businesses in California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESS

The Department is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 407 and 42682 of the Food and Agricultural Code, and to implement, interpret, and make specific Section 42941 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

CONTACT

Inquiries concerning the proposed administrative action may be directed to Heather Spencer or Robert A. Cummings. Inquiries pertaining to the substance of the proposed regulation may be directed to Robert A. Cummings. The contact persons may be reached at the Department of Food and Agriculture, Fruit, Vegetable, and Egg Quality Control Branch, 1220 N Street, Room A-447, Sacramento, CA 95814, (916) 654-0919, fax (916) 654-0666. Written comments may also be submitted via e-mail at hspencer@cdfa.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

A complete copy of existing regulations, the proposed changes, and the Initial Statement of Reasons may be obtained on request from the Department of Food and Agriculture. These documents are available on our website at www.cdfa.ca.gov/cdfa/regs.

In addition, all information, including reports, documentation, and other materials (rulemaking file) related to the proposed action is available upon request from the agency contact persons named in the notice. The Final Statement of Reasons, when available, may

also be obtained from the agency contact persons named in the notice. The text of the proposed regulations with any sufficiently related changes clearly indicated will be made available for 15 days prior to adoption.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to amend Sections 3425(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Melon Fruit Fly Interior Quarantine.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before April 15, 2002.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code Sections 401 and 403). Existing law provides the Secretary may establish, maintain, and enforce quarantine regulations, as he deems necessary, to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Sections 5301, 5302 and 5322).

Existing Section 3425 established an interior quarantine against melon fruit fly (*Bactrocera cucurbitae*), provided that portions (approximately 75 square miles) of Los Angeles County surrounding the El Monte/Rosemead area are under quarantine for melon fruit fly, set forth the hosts, restricts the movement of hosts and possible carriers of melon fruit fly from the area under quarantine and provided for special permits to allow movement of articles and commodities otherwise prohibited. This proposed amendment of Section 3425(b) will remove the quarantine area for melon fruit fly surrounding the El Monte/Rosemead areas of Los Angeles County. The effect of the amendment is to remove authority for the State to regulate movement of hosts and possible

carriers of melon fruit fly within and from the area under quarantine because the fly has been eradicated from that area and the quarantine is no longer necessary for the protection of California's agricultural industry.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3425 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3425. No reimbursement is required for Section 3425 under Section 177561 of the Government Code because this amendment removes the portion of Los Angeles County that was in the area under quarantine from the regulation; therefore, enforcement is no longer necessary. There are no mandated costs associated with the removal of this area (El Monte/Rosemead) from the regulation.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed amendments to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY

The Department proposes to amend Section 3425(b) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Kris Peebles at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa/pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons is available upon request. Requests should be directed to the contact named herein.

If the regulations repealed by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of repeal. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **April 18, 2002** at 11:00 a.m. in the Auditorium of the State Resources Building, 1416 Ninth Street, Sacramento, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **April 18, 2002** following the Public Meeting in the Auditorium of the State Resources Building, 1416 Ninth Street, Sacramento, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes noticed below to occupational safety and health regulations in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **April 18, 2002** following the Public Hearing in the Auditorium of the State Resources Building, 1416 Ninth Street, Sacramento, California.

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND
HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Occupational Safety and Health Standards Board Administrative Regulations and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on April 18, 2002.

1. TITLE 8: OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD ADMINISTRATIVE REGULATIONS
Chapter 3.5, Subchapter 1, Article 2
Sections 406, 411.1–411.4, 415, 417.3 and 417.5
Variances from Occupational Safety and Health
2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
Chapter 4, Subchapter 7, Article 109
Appendix A to Section 5189
Process Safety Management of Acutely Hazardous Materials Listing of Sulfur Dioxide

A description of the proposed changes are as follows:

1. TITLE 8: OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD ADMINISTRATIVE REGULATIONS
Chapter 3.5, Subchapter 1, Article 2
Sections 406, 411.1–411.4, 415, 417.3 and 417.5
Variances from Occupational Safety and Health

INFORMATIVE DIGEST OF PROPOSED
ACTION/POLICY STATEMENT OVERVIEW

Pursuant to Labor Code Section 142.3, the Board has adopted a number of regulations that govern Board consideration of requests for variances from occupational safety and health safety standards. The Board has determined that some of these regulations require clarification or deletion and that additional regulatory provisions are needed.

Under the existing regulations, employees affected by a variance application may request party status in the variance proceedings. Existing regulations also specify that affected employees may elect to have their labor organization (authorized employee representa-

tive) represent them in the proceedings. The regulations further allow interested parties to apply for intervenor status in variance proceedings. The regulations are less clear, however, regarding whether or not a labor organization that wishes to participate in a variance proceeding but that is not explicitly representing an affected employee is an intervenor or a party in the variance.

The Board believes that affected employees' opinions and concerns should be heard during the variance process, either through individual employees or through their labor organizations, and the Board does not believe there is merit to treating these two situations differently. Similarly, the Board sees no basis on which to treat an authorized employee representative as an intervenor if an employee has not expressly requested representation and as a party if an employee has requested representation. Moreover, the Board recognizes that there may be situations in which individual employees prefer to remain anonymous during variance proceedings. Accordingly, the Board proposes to revise the existing regulations to clarify that authorized employee representatives, as well as employees, are entitled to party status in variance proceedings.

Existing administrative regulations also state that the Standards Board entertains applications for interim variances from occupational safety and health regulations. Board staff proposes to delete the references to, and regulations governing, interim variances, because the Standards Board knows of no authority under which it may grant such variances and the presence of these regulations causes the regulated public to believe that interim variances are an option available to them.

Existing regulations further state that, to the extent practicable, hearings for variance applications and temporary variance appeals are to be scheduled so that the Division of Occupational Safety and Health's (Division) evaluation report will be available for presentation at the hearing. The Board considers the Division's input on variance requests to be essential and does not schedule hearings until the Division's report is submitted. Accordingly, the Board proposes to revise the existing regulation to clarify that the Board will wait, in all instances, to schedule the hearing until it receives the Division's report on the matter.

Existing regulations also specify that variance applicants may withdraw their variance requests at any time before a decision is issued either in writing or orally at the variance hearing. The Board proposes to revise this regulation to require that all requests to withdraw a variance application be submitted in writing so that the administrative record is clear. Moreover, the Board proposes to clarify the phrase "before a decision is issued." Both a proposed

decision and a final decision are rendered in variance proceedings and there has been some confusion regarding which of these “decisions” the regulation refers to. To address this concern, the Board proposes to revise the regulation to state that an applicant may withdraw the application anytime before the Board renders its final decision.

Although existing regulations specify that an applicant may withdraw a variance application, the Board does not have a regulatory process for situations in which an applicant does not withdraw its request, but ignores or abandons the application after it has been docketed. These situations require Board staff to devote resources to pursuing the applicant and cause record keeping problems for the staff. Accordingly, the Board proposes to add a regulation that will allow it to dismiss variance requests in these situations.

This proposed rulemaking action contains non-substantive, editorial and grammatical revisions. These non-substantive revisions are not all discussed in this Informative Digest, but they are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the following actions are proposed:

Section 406

This section states that affected employees may elect to participate as parties in variance proceedings. The Board proposes to revise this section to clarify that an authorized employee representative (i.e., a labor organization that has a collective bargaining agreement with the employer) may also elect to participate as a party in the proceedings. This revision will clarify that affected employees and their authorized representatives are entitled to party status.

Section 411.1

This section explains the Board’s procedure for addressing defective applications for interim and/or permanent variances from the occupational safety and health standards. The Board proposes to eliminate the references to interim variances in this section, because the Board knows of no authority under which it may entertain applications for interim variances. Labor Code Section 143 only authorizes the Board to grant permanent variances, and the references to interim variances contained in this section mislead the regulated public into thinking that interim variances are an option available to them. This revision will correct that misperception.

Section 411.2

This section states that an employer may apply for an interim variance. The Board proposes to delete this section to clarify that interim variance applications are not entertained by the Board. This change is needed because the Board is not authorized to grant such

variances and the existing regulations mislead the regulated public into thinking it can. This revision will correct that misperception.

Section 411.3

This section describes the process for granting an interim variance. The Board proposes to delete this section to clarify that the Board does not grant interim variances. The existing regulation causes the public to believe that interim variances are an available remedy and this revision will help eliminate that misunderstanding.

Section 411.4

This section describes the process for denying an interim variance. The Board proposes to delete this section to clarify that the Board does not grant or deny interim variances. The existing regulation causes the public to believe that interim variances are an available remedy and this revision will help eliminate that misunderstanding.

Section 415(b)

This section states that, whenever practicable, hearings on variance applications and appeals will be scheduled at a time when the Division’s evaluation report is available. The Board proposes to revise this section to reflect its current practice, which is to schedule a hearing only after the Division’s report is prepared, in order to clarify the Board’s practices. The Board also proposes to add the term “Temporary Variance” before the word “Appeals” in the section title for clarification purposes. These revisions will have no effect upon the regulated public.

Section 417.3(a)

This section states that variance applicants may withdraw their applications, either in writing or orally at the hearing, at any time before a decision is issued. The Board proposes to revise this section to require that requests to withdraw a variance application be submitted in writing. The Board also proposes to clarify that the withdrawal must be submitted before the Board renders its final decision on the variance. The effect of this revision will be to require applicants to submit requests to withdraw their variance application in writing and to clarify when withdrawals must be submitted.

The Board also proposes to add the term “Temporary Variance” before the word “Appeals” in the section title for clarification purposes. This revision will not effect the regulated public.

Section 417.5

The Board proposes to add a new section that would allow it to dismiss permanent variance applications when the applicant fails to assist in the consideration of the application. This section would require the

Board to provide an applicant with written notice of the Board's intent to dismiss the application at least 30 days prior to taking action and would require the applicant to respond to the notice in writing, and assist in processing the application, in order to avoid dismissal. The effect of this regulation will be to allow for more efficient handling of variance applications.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose non-discretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that this regulatory proposal does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because this regulatory proposal will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this proposal does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

These proposed regulatory changes do not require local agencies to carry out the governmental function of providing services to the public. Moreover, these proposed regulatory changes do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

This regulatory proposal does not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the regulatory proposal will not affect small businesses.

ASSESSMENT

The adoption of the proposed changes to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS

Chapter 4, Subchapter 7, Article 109
Appendix A to Section 5189

Process Safety Management of Acutely Hazardous Materials Listing of Sulfur Dioxide

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

29 Code of Federal Regulations (CFR) Section 1910.119 contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals whose releases may result in toxic, fire or explosion hazards. Appendix A to Section 1910.119 lists highly

hazardous chemicals, toxics and reactives which present a potential for a catastrophic event at or above a listed threshold quantity.

On February 24, 1992, Federal OSHA published a final rule for Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents. The final rule, published in 57, Federal Register (Fed. Reg.), 6356, February 24, 1992, modifies the proposed rule, published in 55, Fed. Reg., 29150, July 17, 1990. In the notice of the final rule, federal OSHA indicated on page 6365 that it had, among several other amendments to the originally proposed rule, modified the entry in Appendix A for sulfur dioxide by eliminating the word "liquid" from its description of that chemical. The reasoning provided in the final rule notice for this amendment to the entry in Appendix A for sulfur dioxide was that "the health hazards are the same regardless of its state." However, this amendment to the final rule apparently intended by federal OSHA was overlooked and to date, this correction has not been made. In an interpretive letter dated April 29, 1997, federal OSHA indicated that it was "planning to correct this entry in the near future."

Title 8 of the California Code of Regulations, General Industry Safety Orders (GISO), Section 5189 is the state's counterpart to 29 CFR Section 1910.119. Section 5189 addresses the prevention of catastrophic releases of toxic, reactive, flammable and explosive chemicals and applies to employers who utilize a process involving a particular chemical or chemicals at or above a threshold quantity listed in Appendix A, or which involves a flammable liquid or gas as defined in subsection (c) of the regulation.

Currently, Appendix A of Section 5189 includes sulfur dioxide as a covered substance only in its liquid state with a threshold quantity of 1,000 pounds. This rulemaking action proposes to delete the term "liquid" from the sulfur dioxide entry in Appendix A so that it is not limited to only its liquid state. This amendment will have the effect of ensuring that both the gaseous and liquid forms of sulfur dioxide are included in the threshold quantity for any workplace process that utilizes this chemical.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California

Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendment to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The above proposals do not contain building standards as defined by Health and Safety Code Section 18909.

A copy of the proposed changes in STRIKEOUT/ UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than April 12, 2002. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on April 18, 2002 will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@hq.dir.ca.gov.

The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to John D. MacLeod, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 10. DEPARTMENT OF INSURANCE

NOTICE OF INTENTION TO AMEND THE CONFLICT OF INTEREST CODE

NOTICE IS HEREBY GIVEN that the Department of Insurance, pursuant to authority vested in it by section 87306 of the Government Code, proposes amendment to its Conflict of Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and sections 87306 of the Government Code.

The Department of Insurance proposes to amend its Conflict of Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The positions being added to the Conflict of Interest Code include the following: Special Assistants to the Commissioner; Chief, Ethics and Operational Compliance Office; Administrative Law Judges; Investment Officers, Chief, Administrative Systems; Staff Services Managers; Program Technician, Producer Licensing Bureau; Assoc. Govtl. Program Analyst, Education Unit, Producer licensing Bureau; Data Processing Managers; Contract Analysts and Procurement staff; Information Technology staff and

senior analysts; and Information Systems Analysts, Project Management Office.

This amendment makes other technical changes to reflect the current organizational structure of the Department and editorial changes that are intended to make the Code more concise and clear. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than May 1, 2002, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than April 15, 2002, by contacting the Contact Person set forth below. If a public hearing is requested, it will be held on May 1, 2002 at 1:00 PM, at 300 Capitol Mall, Sacramento, CA 95814, 16th floor Executive Conference Room.

The Department of Insurance has prepared a written explanation of the reasons for the proposed amendments (Initial Statement of Reasons) and has available the information on which the amendments are based. Copies of the proposed amendments, the Initial Statements of Reasons, and the information on which the amendments are based may be obtained by contacting the Contact Person set forth below.

The Department of Insurance has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscriminatory costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In making these proposed amendments, the Department of Insurance must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

CONTACT PERSON

All inquires concerning this proposed amendment and any communication required by this notice should be directed to:

Ronald J. Lucero
300 Capitol Mall,
Sacramento, CA 95814
Suite 1300
(916) 492-3354
lucror@insurance.ca.gov

TITLE 13. AIR RESOURCES BOARD

NOTICE OF POSTPONEMENT

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA ALTERNATIVE FUELS FOR MOTOR VEHICLE REGULATIONS

BY NOTICE dated and published December 21, 2001, California Notice Register, Register 2001, No. 51-Z, the Air Resources Board (the Board or ARB) announced it would conduct a public hearing to consider the adoption of amendments to its compressed natural gas (CNG) and liquefied petroleum gas (LPG) specifications in the Alternative Fuels for Motor Vehicle Regulations. The hearing was scheduled for February 21, 2002, at 9:00 a.m., at the California Environmental Protection Agency, Air Resources Board, 1001 "I" Street, Coastal Hearing Room, Second Floor, Sacramento, California.

PLEASE BE ADVISED that the hearing has been postponed to the following date, time and place:

DATE: May 16, 2002
TIME: 9:00 a.m.
**PLACE: California Air Resources Board
Auditorium
9530 Telstar Avenue
El Monte, CA 91731**

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., May 16, 2002, and may continue at 8:30 a.m., May 17, 2002. This item may not be considered until May 17, 2002. Please consult the agenda for the meeting, which will be available at least 10 days before May 16, 2002, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact the ARB's Clerk of the Board by May 2, 2002, at (916) 322-5594, or Telephone Device for the Deaf (TDD) (916) 324-9531 or (800) 700-8326 for TDD calls from outside the Sacramento area, to ensure accommodation.

TITLE 14. CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

NOTICE OF PROPOSED RULEMAKING

CHAPTER 3. MINIMUM STANDARDS FOR SOLID WASTE HANDLING AND DISPOSAL

ARTICLE 6.0. TRANSFER/PROCESSING OPERATIONS AND FACILITIES REGULATORY REQUIREMENTS

PROPOSED REGULATORY ACTION

The California Integrated Waste Management Board (CIWMB) proposes to amend Title 14, California Code of Regulations (14 CCR), Division 7, Chapter 3, Article 6.0, commencing with section 17400. The proposed regulations are intended to clarify the application of existing regulations to the transfer/processing of putrescible wastes.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the CIWMB. The written comment period for this rulemaking ends at 5:00 p.m. on April 15, 2002. The CIWMB will also accept written comments during the public hearing described below. Please submit your written comments to:

Robert Holmes
California Integrated Waste Management Board
Permitting and Enforcement Division
P.O. Box 4025
Sacramento, CA 95812-4025
FAX: (916) 341-6376
e-mail: rholmes@ciwmb.ca.gov

PUBLIC HEARING

CIWMB staff will conduct a public hearing at the Joe Serna, Jr. Cal/EPA Building, 2nd Floor Central Valley Auditorium, 1001 I Street, Sacramento, CA on May 14, 2002. The hearing will begin at 9:30 a.m. and conclude after all testimony is given. The CIWMB requests that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. The Central Valley Auditorium is wheelchair accessible.

INFORMATIVE DIGEST

The Integrated Waste Management Act (Act) [AB 939 (Sher), Stats. 1989, c. 1095] and Public Resources Code (PRC) Section 40000 et seq., provides for the protection of public health and safety and the environment through waste prevention, waste diversion, and safe waste processing and disposal. PRC

Section 40502 requires the CIWMB to adopt rules and regulations to implement this Act. PRC Section 43020 requires the CIWMB to adopt and revise regulations, which set forth minimum standards for solid waste handling, transfer, composting, transformation, and disposal. Regulations in California Code of Regulations, Title 14, Division 7, Chapter 3, Articles 6.0–6.4, set forth minimum operating standards and permitting requirements for the transfer/processing of solid waste.

Existing law, PRC Section 40200(b), states that a facility, whose principal function is to receive, store, convert, or otherwise process wastes which have already been separated for reuse and are not intended for disposal, are not solid waste “transfer or processing stations.”

Existing regulations (14 CCR 17402.5(d)) included provisions known as the “two-part test” designed to distinguish between self-proclaimed recyclers that were legitimately handling separated for reuse materials and those who were actually handling solid waste. The two-part test provides that a business is a recycling center, and is not subject to regulation, if it: 1) accepts only material that has been separated for reuse (or source separated); and 2) the amount of residual waste sent to landfills from the business is less than 10% of the incoming material. If a business fails either part of the test, it is subject to regulation as a transfer/processing operation or facility.

In establishing the two-part test, the CIWMB did not intend to allow a business accepting putrescible wastes to pass the two-part test and avoid being subject to regulation. The CIWMB determined and continues to believe that putrescible wastes can pose a significant threat to public health, safety, or the environment, and, therefore, sites handling putrescible wastes should be regulated. However, recently some have argued that existing regulations could be interpreted to allow a business accepting putrescible wastes to avoid regulation.

At its April 24–25, 2001 meeting, the CIWMB adopted emergency regulations intended to clarify the application of existing regulations to the transfer/processing of putrescible wastes. The Office of Administrative Law approved the emergency regulations, including a 180-day delayed effective date, and filed them with the Secretary of State on August 13, 2001. The emergency regulations, which are effective on February 13, 2002, added at third part to the two-part test. With the emergency regulations, if a site handles more than 1% putrescible wastes, it is subject to the regulation under the California Code of Regulations, Title 14, Division 7, Chapter 3, Articles 6.0–6.4.

The proposed regulations that are the subject of this notice will make permanent the provisions of these emergency regulations.

POLICY STATEMENT OVERVIEW

The CIWMB has determined that putrescible wastes can pose a threat to public health, safety, or the environment, and, therefore, sites handling putrescible wastes should be regulated. The proposed regulations provide that, if a site handles more than 1% putrescible wastes, it will be subject to regulation under the California Code of Regulations, Title 14, Division 7, Chapter 3, Articles 6.0–6.4.

PLAIN ENGLISH REQUIREMENTS

CIWMB staff prepared the proposed final regulations pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Section 11342.580 and 11346.2(a)(1). The proposed final regulations are considered non-technical and are written to be easily understood by those parties that will use them.

AUTHORITY AND REFERENCES

PRC Sections 40502, 43020, and 43021 provide authority for these regulations. The purpose of the proposed regulations is to implement, interpret, and make specific PRC Sections 40053, 43020, and 43021.

FEDERAL LAW OR REGULATIONS MANDATE

Federal law or regulations do not contain comparable requirements.

LOCAL MANDATE AND FISCAL DETERMINATIONS

CIWMB staff has determined that the proposed regulations impose a mandate on local agencies that serve as CIWMB certified local enforcement agencies. These agencies will incur costs resulting from regulatory permitting and inspection requirements. The mandate does not require state reimbursement because the agencies are authorized by PRC Sections 43213 and 44006(c) to charge a fee to recover the costs of performing these services.

CIWMB staff has determined that the proposed regulations do not impose: 1) a mandate on local school districts that requires state reimbursement pursuant to Government Code, Division 4, Part 7 (commencing with Section 17500); 2) significant costs or savings to any state agency; 3) costs to any local agency or school district required to be reimbursed under Government Code, Division 4, Part 7 (commencing with Section 17500); 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

CIWMB staff made an initial determination that the proposed regulations will not have a significant effect on housing costs.

EFFECT ON BUSINESSES

CIWMB staff made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The CIWMB has identified only one facility that would potentially be immediately subject to the revised regulations. That facility is not a small business. Due to the capital investment required, few small businesses establish and operate solid waste transfer/processing facilities. As such these regulations will not affect small business in that no small business is required to comply with the regulations, none is required to enforce the regulations, and none derives a benefit nor incurs a detriment from the enforcement of the regulations. If a small business were to establish a solid waste transfer/processing facility it would be subject to these revised regulations.

EFFECT ON CREATION OR ELIMINATION OF JOBS, EXISTING OR NEW BUSINESS IN THE STATE OF CALIFORNIA

CIWMB staff has determined that the proposed regulatory action will not affect: 1) the creation or elimination of jobs within the State of California; 2) the creation of new businesses or the elimination of existing businesses within California; or 3) the expansion of businesses currently doing business with the state.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

CIWMB staff analyzed the economic impact of the proposed action. The CIWMB has identified one facility that would potentially be immediately subject to the revised regulations. The economic analysis indicates an initial cost to the facility of \$15,000 and ongoing costs of \$36,160 per year.

CONSIDERATION OF ALTERNATIVES

The CIWMB must determine that no reasonable alternative considered by the CIWMB or that has otherwise been identified and brought to the attention of the CIWMB would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The CIWMB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action or the substance of the proposed regulations may be directed to:

Robert Holmes
California Integrated Waste Management Board
Permitting and Enforcement Division
P.O. Box 4025
Sacramento, CA 95812-4025
(916) 341-6376
FAX: (916) 319-7405
e-mail: rholmes@ciwmb.ca.gov

Back-up contact person to whom inquiries concerning the proposed administrative action may be directed:

Elliot Block
California Integrated Waste Management Board
Legal Office
P.O. Box 4025
Sacramento, CA 95812-4025
(916) 341-6080
FAX: (916) 341-7138
e-mail: eblock@ciwmb.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The CIWMB will have the entire rulemaking file, and all information upon which the proposed regulations are based, available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Robert Holmes at the address, e-mail, or telephone number listed above. For more timely access to the proposed text of the regulations, and in the interest of waste prevention, interested parties are encouraged to access the CIWMB's website at <http://www.ciwmb.ca.gov/Rulemaking/Putrescible>.

Additionally, the Final Statement of Reasons will be available at the above listed Internet address or you may call the contact persons named above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The CIWMB may adopt the proposed regulations substantially as described in this notice. If the CIWMB makes modifications which are sufficiently related to the proposed text, it will make the modified text—with changes clearly indicated—available to the public for at least 15 days before the CIWMB adopts the regulations as revised. Requests for the modified text should be made to the contact person. The CIWMB will mail any modified text to all persons who testify at a public hearing; all persons who submit written

comments at a public hearing; all persons whose comments are received during the comment period; and all persons who request notification of the availability of such changes. The CIWMB will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission, pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240 and 315 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 206 and 215 of said Code, proposes to amend subsections (b)(91.1), (b)(176) and (b)(195) of Section 7.50, Title 14, California Code of Regulations, re: Klamath River Sport Fishing regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Hook Size Change for Anadromous Waters of the Klamath River System: Current regulations in subsection (b)(91.1)(A)2. define hook size requirements for the Klamath River system above the Highway 101 bridge. These requirements allow the use of any single hook having a gap between the point and shank that is between ½ and 1 inch; or, any multiple hook having a gap between the point and shank that is between ¼ and ½ inch. This requirement was designed to reduce the incidental catch and mortality of juvenile steelhead trout and coho salmon. Also, area closures currently exist that are designed to protect these fish during the peak juvenile downstream migrations (April/May). For additional protection and in the interest of consistency, the Department is proposing a maximum single hook size with a gap no greater than ⅝ inch and a maximum multiple hook size with a gap no greater than ½ inch.

General Area Closures within 400 feet of any Seining Operation: Current regulations in subsection (b)(91.1)(B)1. prohibit any fishing within 400 feet on any U.S. Fish and Wildlife Service or Department of Fish and Game (Department) seining operation. The Department no longer conducts seining operations and, therefore, is proposing to eliminate this restriction.

Additional Closures to Protect Anadromous Fish 1. Date change for the fishing closures on the Klamath River from Coon Creek Falls to 3,500 feet below Iron Gate Dam: Current regulations in subsection (b)(91.1) allow anglers to catch and keep

any salmon regardless of size from December 1 through July 31. The remainder of the year, August 1 through November 30 chinook salmon take is regulated by a Klamath Basin impact quota. The current regulations do not provide protection for adult spring chinook during their April through July spawning migration. The Department, therefore, is proposing to eliminate the take of adult spring run chinook salmon above Coon Creek Falls to a point 3,500 feet below Iron Gate Dam from April 1 through July 31. This closure would provide protection for naturally produced spring run chinook salmon in the Klamath River and still provide anglers with the opportunity to harvest the hatchery component of the spring run in the lower Klamath River below the falls at Coon Creek.

2. Date change for the fishing closure for the Shasta River: Current regulations allow anglers to fish from the fourth Saturday in May through Feb. 28 in the Shasta River main stem from Interstate 5 to 250 feet above the Department's fish counting weir. This area supports a moderate steelhead fishery from mid November through February. The Department, however, recognizes that additional protection is warranted during that period for adult fall run chinook. The Department, therefore, is proposing that the current closure on the Shasta River main stem from Interstate 5 to 250 feet above the Department's fish counting weir be expanded to include the period September 1 through November 15.

3. Date change for the fishing closure from Trinity River main stem from Hawkins Bar Bridge (Road to Denny) downstream to the mouth of the Trinity: Current regulations allow anglers to fish all year in the Trinity River main stem downstream from the mouth of the South Fork Trinity. The Trinity River upstream from its confluence with the South Fork Trinity is closed to all fishing from April 1 through the Friday preceding the fourth Saturday in May. The closure should be extended to include the Trinity River from Hawkins Bar Bridge (Road to Denny) downstream to the confluence with the Klamath River. This addition would close the entire Trinity River downstream from the Old Lewiston Bridge from April 1 through the Friday preceding the fourth Saturday in May. This closure would provide an additional 30 miles of protection to juvenile coho salmon and steelhead and to wild adult spring-run chinook salmon migrating up river to spawn.

Quota Adjustment: Under current regulations in subsection (b)(91.1)(C), the allowable chinook salmon harvest in the Klamath River system is based on spawning run size predictions and spawning escapement goals. The harvest and the distribution of the

catch are regulated by seasons, daily and weekly bag and possession limits, and area quotas and allocations. Salmonids from the Klamath River basin are managed through a cooperative system of state, federal, and tribal management agencies. Regulations developed through this system are designed to meet natural and hatchery escapement needs for these stocks, while providing equitable harvest opportunities to ocean (sport and commercial) and river (sport and tribal) users. The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of sport and commercial ocean fisheries in the fishery management zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean fishing regulations by the National Marine Fisheries Service. The Department and the Commission adopt regulations for state waters (inside three miles) that are consistent with federal regulations.

Annual adjustment of the quota is necessary to meet natural and hatchery escapement needs for Klamath River fall-run chinook salmon stocks, while providing equitable harvest opportunities for ocean (sport and commercial) and river (sport and tribal) users. The total river system recreational harvest of fall chinook salmon is currently regulated by a quota. In 2001, the share, or impact quota, for the Klamath River basin allowable sport catch was 29,800 adult fish (39 percent of the total allowable harvest by non-tribal fisheries, including ocean commercial, ocean recreational and recreational river fisheries).

Projections of the abundance of adult Klamath River fall-run chinook salmon in the 2002 season are not yet available from the PFMC. However, preliminary examination of data available to Department staff suggests that the predicted 2002 adult salmon run will be less than the 2001 run. Consequently, the Department is suggesting that the Commission consider a 2002 quota for the river recreational fishery lower than that of last year, and for notice requirements, within a range lower than the 2001 quota (1,200–25,000 adult salmon). The Commission also will consider modifying the share of the allowable catch allocated to the river recreational fishery (which was 39 percent in 2001). As in prior years, the river recreational fishing quota would be split evenly between fisheries above and below Coon Creek Falls.

Consistency with Reference to Coon Creek Falls:

The current regulations in subsection (b)(91.1)(C)1.b. reads "Klamath River Below Coon Creek Falls: No salmon over 22 inches may be retained after 50% of the basin impact quota has been taken below Coon Creek". For clarification and consistency, the Department is proposing to add the word "falls" in the second reference to the area below Coon Creek.

Restrictions to Fishing when Iron Gate Hatchery and Trinity River Hatchery Meet Spawning Escapement Goals:

Current regulations in subsection (b)(91.1)(C)1.c.ii. and subsection (b)(91.1)(C)1.d. allow anglers to harvest adult chinook salmon after quota attainment from 3,500 feet below Iron Gate Dam to Coon Creek Falls once the Department determines that the adult fall chinook salmon spawning escapement at Iron Gate Hatchery exceeds 8,000 adult fish. Trinity River anglers can harvest adult chinook after the quota is met between Old Lewiston Bridge and the mouth once escapement at Trinity River Hatchery exceeds 4,800 adult fish. The Department is recommending the open areas be restricted from a point beginning 3,500 feet below Iron Gate Dam to the Interstate 5 bridge on the Klamath River and from Old Lewiston Bridge to the mouth of Indian Creek on the Trinity River.

Reduction in Daily Bag Limit, Weekly Bag Limit and Possession Limit: The quota to be recommended by the PPMC is not currently known; however, it is expected to be much lower than that established for the 2001 season. Consequently, the Department is recommending a reduction in daily bag, weekly bag, and possession limits for the 2002 Klamath River sport fishery.

The Department is recommending that the Commission consider the following Klamath River recreational fishery changes to reflect a reduction in the Klamath River basin impact quota:

1. **Reduction in Daily Bag Limit:** The daily bag limit, as specified in the current regulation, is three king salmon (chinook salmon), but no more than two adult king salmon over 22 inches, and one hatchery trout or hatchery steelhead. The Department is proposing that the Commission decrease the king salmon daily bag limit to a total of two king salmon, but no more than one king salmon over 22 inches. The one hatchery trout or hatchery steelhead bag limit would continue.
2. **Reduction in Weekly Bag Limit:** The current regulation specifies that no more than six king salmon over 22 inches may be retained in any seven consecutive days. The Department is proposing that the Commission consider amending this provision to reduce the weekly bag limit to four king salmon over 22 inches in a seven-day period.
3. **Possession Limit:** The current regulation specifies that no more than 12 king salmon may be possessed, of which no more than six may be over 22 inches total length. The Department is proposing that the Commission consider decreasing the possession limit to no more than 8 king salmon, of which no more than four may be over 22 inches total length.

Date Change for the Fishing Closure in the South Fork Trinity River Downstream from the Mouth of Grouse Creek:

Current regulations in subsection (b)(91.1)(F)7.g. allow anglers to fish the South Fork Trinity River downstream from the mouth of Grouse Creek from the Saturday preceding Memorial Day through March 31. The Department is recommending that the season opening date be changed to the fourth Saturday in May to be consistent with the opening date for other sections in the Trinity River Basin.

Closures to Modify Allocations: Currently, the annual impact quota is split evenly, with 50% of the quota allocated to the Klamath below Coon Creek Falls and 50% to the remainder of the Klamath above Coon Creek Falls and to the entire Trinity River. Current regulations define three sub-quoted areas above Coon Creek Falls. The three quotas ensure equitable harvest of adult chinook in the upper Klamath and Trinity rivers. Due to likely funding and personnel decreases, the Department will only monitor the fishery below Coon Creek Falls (one quota area). Therefore, the Department is proposing the following seasonal closures for the upper Klamath and the Trinity rivers.

1. Allowable Fishing Season from Coon Creek Falls to 3,500 feet below Iron Gate Dam:

The Department is recommending that fishing for adult king salmon run for 28 days beginning when 50% of the basin impact quota has been taken below the falls at Coon Creek. The proposed season will equitably distribute the quota of adult chinook salmon among all inriver non-tribal user groups throughout the Klamath river basin above Coon Creek Falls.

2. Allowable Fishing Season from Old Lewiston Bridge to the Highway 299 West Bridge at Cedar Flat:

The Department is recommending that no salmon over 22 inches total length be retained from September 9 through September 17 and from October 8 through November 30. The closures are designed to maximize and distribute the harvest of adult fall run chinook salmon while managing the fishery within the impact quota.

3. Allowable fishing Season from Hawkins Bar Bridge (Road to Denny) downstream to the mouth of the Trinity:

The Department is recommending that no salmon over 22 inches total length be retained from September 9 through September 30 and October 29 through November 30. These closures are designed to limit the harvest of adult chinook in the lower Trinity River while allowing migrating salmon an opportunity to distribute to the upper Trinity River. This will maximize angling opportunity for adult chinook salmon in the entire Trinity River.

Minor editorial changes are also being made for clarification to correct cross references in subsections 7.50(b)(176) and (b)(195).

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Hubbs-Sea World Research Institute, Shedd Auditorium, 2595 Ingraham Street, San Diego, CA, on Friday, March 8, 2002, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the City Council Chambers, 333 West Ocean Boulevard, Long Beach, CA, on Friday, April 5, 2002, at 8:30 a.m., or as soon thereafter as the matter may be heard.

No oral comments will be accepted by the Commission after its hearing on April 5, 2002. Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to jduffy@dfg.ca.gov, but they must be received no later than 5:00 p.m. on Monday, April 15, 2002. E-mail comments must include the true name and mailing address of the commentor.

NOTICE IS FURTHER GIVEN that proposed regulations will be considered for adoption at a teleconference hearing to be held at the Resources Building, Room 1320, 1416 Ninth Street, Sacramento, CA, on Thursday, April 25, 2002, at 10 a.m. The meeting will be audible to the public from the Commission office and the interested public is encouraged to attend at this location.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Kathy Maxwell at the preceding address or phone number. Neil Manji, Fisheries Programs Branch, Department of Fish and Game, phone (503) 225-2306, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days

prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff. .

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 16. VETERINARY MEDICAL BOARD

NOTICE IS HEREBY GIVEN that the Veterinary Medical Board (hereinafter referred to as "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs/Veterinary Medical Board office, 1424 Howe Avenue, Greg Gorges Conference Room F, Sacramento, California 95825, at 10:30 a.m., on April 18, 2002. Written comments must be received by the Board at its office not later than 5:00 p.m. on April 15, 2002, or must be received by the Board at the hearing. Written comments may be submitted by mail at the address listed on the last page of this notice, by E-mail at vmb@dca.ca.gov and by fax at (916) 263-2621.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 4808 of the Business and Professions Code, and to implement, interpret or make specific Section 4832 of said Code, the Board is considering changes to Division 20 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law authorizes the Veterinary Medical Board to amend, adopt, and repeal regulations necessary to carry out the provisions of Chapter 11. This regulatory proposal will adopt section 2061 of the California Code of Regulations to establish for the composition of the Registered Veterinary Technician Committee.

1. Adopt section 2061. There are no existing regulations that specify the composition for the Registered Veterinary Technician Committee ("Committee"). This regulatory proposal adopts regulations to 1) identify that the Veterinary Medical Board shall appoint members to the Committee; 2) specify the number of members; 3) specify the number of professional and public members; 4) establish residency and practice requirements; 4) identify length and limit of terms; and 5) establish the criteria for removal of a member.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

BUSINESS IMPACT

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

IMPACT ON JOBS/NEW BUSINESSES

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

**COST IMPACTS ON REPRESENTATIVE
PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON HOUSING COSTS

The Board has made an initial determination that the proposed regulatory action would have no effect on housing costs.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

**STATEMENT OF REASONS
AND INFORMATION**

The Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request by contacting Deanne Pearce, (916) 263-2610, at the Veterinary Medical Board, at 1420 Howe Avenue, Suite 6, Sacramento, California 95825-3228.

**AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS
AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection at the address listed above. To inspect the rulemaking file contact the person identified below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be addressed to Deanne Pearce at the above address or at (916) 263-2610

The backup contact person is Jennifer Thornburg (916) 263-2610. The person designated to respond to questions on the substance of the regulatory proposal is Deanne Pearce (916) 263-2610.

BOARD INTERNET WEBSITE

The Board maintains a website at www.vmb.ca.gov where rulemaking file documents may be accessed.

**TITLE 22/MPP. DEPARTMENT
OF SOCIAL SERVICES**

**NOTICE OF PROPOSED CHANGES
IN REGULATIONS**

**ITEM # 1 Automated External Defibrillators in Adult
and Elderly Facilities
[ORD #0801-17]**

California Department of Social Services (CDSS) hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held April 17, 2002, as follows:

April 17, 2002
Office Building #9
744 P St. Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by telefax to the address/number listed below. All comments must be received by 5:00 p.m. on April 17, 2002.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address

requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice and the proposed regulations are available online at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Anthony J. Velasquez, Chief
Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
TELEFAX: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Community Care Licensing, Title 22, Division 6, Chapter 1—General Licensing Requirements, Section 80001 [Definitions], Section 80061 [Reports], Section 80075.1 [Automated External Defibrillators (AEDs)], Chapter 3—Adult Day Care Facilities/Adult Day Support Centers, Section 82001 [Definitions], Section 82061 [Reports], Section 82075.2 [Automated External Defibrillators (AEDs)], Chapter 8—Residential Care Facilities for the Elderly, Section 87101 [Definitions], Section 87561 [Reports], Section 87575.2 [Automated External Defibrillators (AEDs)], Chapter 8.5—Residential Care Facilities for the Chronically Ill, Section 87801 [Definitions], Section 87861 [Reports], and Section 87925 [Automated External Defibrillators (AEDs)].

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to Health and Safety Code Section 1797.196, these regulations pertain to the use of Automated External Defibrillators (AEDs) in adult and elderly facilities. Presently there is no prohibition against AEDs in community care facilities. Anyone wishing to purchase an AED may do so, following federal regulations which AED vendors must provide to purchasers. The purpose of having Community Care Licensing regulations in place for adult and elderly facilities is to clarify for licensees that AEDs in facilities are permitted, and what the requirements are. The regulations will also provide guidelines to licensees for district office oversight of AEDs in

facilities. It is preferable to proactively address this new technology than to have licensees trying to seek information from district offices with no regulations to guide them.

AEDs were designed to enable trained lay persons to administer an electric shock to the heart of anyone in cardiac arrest wherever an AED was located. The AED voice-prompts the user through the process of preparing to apply, and applying, electric shock. Almost anyone can quickly learn to use an AED. Cardiac arrest due to abnormal heart rhythm causes death for many thousands of Americans every year. Electric shock restores normal rhythm to the heart. If applied within a maximum of ten minutes from the beginning of the cardiac arrest, electric shock saves lives. Before the introduction of portable AEDs, paramedics and physicians were rarely able to administer electric shock within ten minutes; therefore, most victims of cardiac arrest died. Today, with the placement of AEDs in locations where groups of people gather (sports arenas, shopping malls, airports, etc.), it is possible for rescuers to apply electric shock with an AED in a shorter period of time, thus saving the lives of many more cardiac arrest victims.

COST ESTIMATE

1. Costs or Savings to State Agencies: None.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate upon local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is an impact on small businesses.

ASSESSMENT OF JOB CREATION
OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Health and Safety Code Sections 1530, 1568.072, and 1569.30. Subject regulations implement and make specific Health and Safety Code Sections 1250, 1501, 1502, 1507, 1530, 1531, 1568.02, 1568.061, 1568.072, 1569.1, 1569.2, 1569.30, 1569.312, 1569.73, and 1797.196.

CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION

Contact Person: Anthony J. Velasquez
(916) 657-2586

Backup: Jaimie Porter
(916) 657-2586

CDSS REPRESENTATIVE REGARDING
SUBSTANCE OF THE PROPOSED REGULATION

Program Contact: Sharon Anderson
(916) 324-4170

Backup: Joan Regeleski
(916) 324-3058

AGENDA ITEMS FOR THIS PUBLIC HEARING
April 17, 2002

- ITEM #1 ORD #0801-17—Automated External Defibrillation Regulations
- ITEM #2 ORD #1201-22—California Food Assistance Program
- ITEM #3 ORD #0801-16—Incidental Medical Services Clean-up Regulations
- ITEM #4 ORD #1201-24 AB 1692 CalWORKs Amendments
- ITEM #5 ORD #1201-23 CalWORKs 60-Month Time Limit Procedures

TITLE 22/MPP. DEPARTMENT
OF SOCIAL SERVICES

NOTICE OF PROPOSED CHANGES
IN REGULATIONS

ITEM # 3 Incidental Medical Services Clean-up
Regulations
[ORD #0801-16]

The California Department of Social Services (CDSS) hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held April 17, 2002, as follows:

April 17, 2002
Office Building #9
744 P St. Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by telefax to the address/number listed below. All comments must be received by 5:00 p.m. on April 17, 2002.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice and the proposed regulations are available online at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Anthony J. Velasquez, Chief
Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
TELEFAX: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Community Care Licensing, Title 22, Division 6, Chapter 1—General Licensing Requirements, Section 80001 (Definitions), Section 80006 (Operation Without A License), Section 80061 (Reporting Requirements), Section 80065 (Personnel Requirements), Section 80068.3 (Modifications to Needs and Services Plan), Section 80071 (Register of Clients), Section 80075 (Health-Related Services), Section 80077.2 (Care for Clients Who Rely Upon Others to Perform all Activities of Daily Living), Section 80077.3 (Care for Clients Who Lack Hazard Awareness or Impulse Control), Section 80077.4 (Care for Clients with Incontinence), Section 80087 (Buildings and Grounds), Article 8 (Incidental Medical Services), Section 80090 (Health and Safety Services), Section 80092.1 (General Requirements for Restricted Health Conditions), Section 80092.2 (Restricted Health Condition Care Plan), Section 80092.3 (Inhalation-Assistive Devices), Section 80092.4 (Colostomy/Ileostomy), Section 80092.6 (Indwelling Urinary Catheter/Catheter Procedure), Section 80092.7 (Staph or Other Serious, Communicable Infections), Section 80092.8 (Insulin-Dependent Diabetes), Section 80092.9 (Wounds), Section 80092.10 (Gastrostomy Feeding, Hydration, and Care), Section 80092.11 (Tracheostomies), and Section 80095 (Clients in Care at Time of Final Adoption of Regulations).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These proposed Community Care Licensing Division (CCLD) regulations amend specific provisions in Title 22, Division 6, Chapter 1, General Licensing Requirements.

In 1996, the passage of AB 2835 specified which incidental medical services would be provided in adult community care facilities. It also specified the conditions under which these services would be provided and which medical services were prohibited. In 1997, AB 1545 further amended Section 1506 of the Health and Safety Code to authorize unlicensed caregivers trained by a licensed healthcare professional to provide incidental medical services in Community Care Facilities (CCFs).

To implement this legislation, the Incidental Medical Services (IMS) regulations became effective in October 1998 and CCFs began accepting and retaining clients who have certain medical conditions that were previously not allowed.

This proposed regulation action will provide clean up. Grammatical errors, redundant language and inconsistencies have been identified and corrected. These Incidental Medical Services Cleanup regulations also provide clarity by adding language to existing requirements reported to be unclear or difficult to understand.

COST ESTIMATE

1. Costs or Savings to State Agencies: None.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate upon local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is an impact on small businesses.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Health and Safety Code Section 1530. Subject regulations implement and make specific Health and Safety Code Section 1530.

**CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION**

Contact Person: Anthony J. Velasquez
(916) 657-2586

Backup: Jaimie Porter
(916) 657-2586

**CDSS REPRESENTATIVE REGARDING
SUBSTANCE OF THE PROPOSED REGULATION**

Program Contact: Shauneen Zupan
(916) 324-4043

Backup: Joan Regeleski
(916) 324-3058

**AGENDA ITEMS FOR THIS PUBLIC HEARING
April 17, 2002**

- ITEM #1 ORD #0801-17—Automated External Defibrillation Regulations
- ITEM #2 ORD #1201-22—California Food Assistance Program
- ITEM #3 ORD #0801-16—Incidental Medical Services Clean-up Regulations
- ITEM #4 ORD #1201-24 AB 1692 CalWORKs Amendments
- ITEM #5 ORD #1201-23 CalWORKs 60-Month Time Limit Procedures

**TITLE MPP. DEPARTMENT
OF SOCIAL SERVICES**

**NOTICE OF PROPOSED CHANGES
IN REGULATIONS**

ITEM # 2 California Food Assistance Program
[ORD #1201-22]

The California Department of Social Services (CDSS) hereby gives notice of the proposed regulatory action(s) described below. Any person interested may

present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held April 17, 2002, as follows:

April 17, 2002
Office Building #9
744 P St. Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by telefax to the address/number listed below. All comments must be received by 5:00 p.m. on April 17, 2002.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice and the proposed regulations are available online at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Anthony J. Velasquez, Chief
Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
TELEFAX: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Manual of Policies and Procedures (MPP) Division 63 (Food Stamps), Chapter 63-400 (Eligibility Standards), Section 63-403 [California Food Assistance Program (CFAP)]

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Assembly Bill 429 (Chapter 111, Statutes of 2001) trailer bill was signed into law on July 26, 2001. A provision of this law amended Section 18930(b)(4) of the Welfare and Institutions Code. The amendment called for the repeal of the sunset date of September 30, 2001, that allowed eligibility to the California Food Assistance program for certain legal noncitizens that entered the United States on or after August 22, 1996. By repealing the September 30, 2001 date, these legal noncitizens will remain eligible indefinitely.

The current state regulations erroneously reflect a sunset date of September 30, 2000. This is due to an oversight from the last regulatory changes.

The section of the regulations that contains the federal eligibility criteria for the Food Stamp program is no longer necessary, and therefore, the regulations need to be changed accordingly.

COST ESTIMATE

1. Costs or Savings to State Agencies: Additional expenditures of approximately \$6,776,000 in the current State Fiscal Year. It is anticipated that State agencies will be able to absorb these additional costs within their existing budgets and resources. Funding for the current year was included in the November 2001 Subvention.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: No fiscal impact exists because this regulation does not affect any local entity or program. Local government does not share in the funding of this program.
4. Federal Funding to State Agencies: No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code.

**STATEMENT OF SIGNIFICANT ADVERSE
ECONOMIC IMPACT ON BUSINESS**

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**STATEMENT OF POTENTIAL COST IMPACT
ON PRIVATE PERSONS OR BUSINESSES**

CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

**ASSESSMENT OF JOB CREATION
OR ELIMINATION**

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Sections 10553 and 18904. Subject regulations implement and make specific Welfare and Institutions Code Section 18930(b)(4).

**CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION**

Contact Person: Anthony J. Velasquez
(916) 657-2586

Backup: Robin Garvey
(916) 657-2586

**CDSS REPRESENTATIVE REGARDING
SUBSTANCE OF THE PROPOSED REGULATION**

Program Contact: Bill Mullinax
657-3418

Backup: Mike Papin
654-1880

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code Section 11346.4.

**AGENDA ITEMS FOR THIS PUBLIC HEARING
April 17, 2002**

- ITEM #1 ORD #0801-17—Automated External Defibrillation Regulations
- ITEM #2 ORD #1201-22—California Food Assistance Program
- ITEM #3 ORD #0801-16—Incidental Medical Services Clean-up Regulations
- ITEM #4 ORD #1201-24 AB 1692 CalWORKs Amendments
- ITEM #5 ORD #1201-23 CalWORKs 60-Month Time Limit Procedures

**TITLE MPP. DEPARTMENT
OF SOCIAL SERVICES**

**NOTICE OF PROPOSED CHANGES
IN REGULATIONS**

**ITEM # 4 AB 1692 CalWORKs Amendments
[ORD #1201-24]**

The California Department of Social Services (CDSS) hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held April 17, 2002, as follows:

April 17, 2002
Office Building #9
744 P St., Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by telefax to the address/number listed below. All comments must be received by 5:00 p.m. on April 17, 2002.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice and the proposed regulations are available online at <http://www.dss.cahnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Anthony J. Velasquez, Chief
Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
TELEFAX: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Chapter 42-700 (Welfare-to-Work); Section 42-701 (Introduction to Welfare-to-Work), Section 42-711 (Welfare-to-Work Participation Requirements), Section 42-712 (Exemptions to Welfare-to-Work Participation), Section 42-718 (Other Providers of Activities and Services), Section 42-719 (School Attendance), and Section 42-721 (Noncompliance with Program Requirements).

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Assembly Bill (AB) 1692, Chapter 652, Statutes of 2001 amended Sections 11320.1, 11322.9, and 11454 of the Welfare and Institutions Code, requiring the California Department of Social Services (CDSS) to expand the activities allowed for post 18- or 24-month time limit California Work Opportunity and Respon-

sibility to Kids (CalWORKs) recipients to include U.S. Department of Labor (DOL) Welfare-to-Work (WtW) Grant program paid community service or work experience. This expansion allows counties to utilize existing DOL Welfare-to-Work programs to provide community service or work experience jobs to recipients, who have reached their 18- or 24- month time limit, in actual employment settings that will enhance these recipients' skills and employability. In addition, the proposed regulations clarify existing language and correct erroneous cross-references contained in current Welfare-to-Work regulations.

COST ESTIMATE

1. Costs or Savings to State Agencies: These amendments could create savings for the counties in the CalWORKs Employment Services program because participants receiving services funded by the federal Welfare-to-Work program would otherwise need to be funded through CalWORKs. However, since the CalWORKs Employment Services single allocation is funded under a program grant giving the counties flexibility in the use of those funds, there will not be any savings to the state.
2. Costs to Local Agencies or School Districts: These amendments could create savings for the counties in the CalWORKs Employment Services program because participants receiving services funded by the federal Welfare-to-Work program would otherwise need to be funded through CalWORKs. However, since the CalWORKs Employment Services single allocation is funded under a program grant giving the counties flexibility in the use of those funds, there will not be any savings to the state.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: No fiscal impact exists because the state receives a block grant under the Temporary Assistance for Needy Families (TANF) program, which is a set amount of funding.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate on local agencies but not on school districts. There are no state mandated costs in these regulations which require state reimbursement under Section 17500 et seq., of the Government Code because county welfare department administrative costs are paid pursuant to Welfare and Institutions Code Section 15204.2, and county welfare departments are not required to exceed the single allocation provided in that section.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 10553 and 10554 of the Welfare and Institutions Code. Subject regulations implement and make specific Sections 11320.1, 11322.9, 11328.8(c), and 11454 of the Welfare and Institutions Code and 42 U.S.C. 603(a)(5).

CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person: Anthony J. Velasquez
(916) 657-2586
Backup: Rick P. Torres
(916) 657-2659

**CDSS REPRESENTATIVE REGARDING
SUBSTANCE OF THE PROPOSED REGULATION**

Program Contact: May Otow
(916) 654-1394

Backup: Audrey King
(916) 654-0946

**AGENDA ITEMS FOR THIS PUBLIC HEARING
April 17, 2002**

- ITEM #1 ORD #0801-17—Automated External
Defibrillation Regulations
- ITEM #2 ORD #1201-22—California Food As-
sistance Program
- ITEM #3 ORD #0801-16—Incidental Medical
Services Clean-up Regulations
- ITEM #4 ORD #1201-24 AB 1692 CalWORKs
Amendments
- ITEM #5 ORD #1201-23 CalWORKs 60-Month
Time Limit Procedures

**TITLE MPP. DEPARTMENT
OF SOCIAL SERVICES**

**NOTICE OF PROPOSED CHANGES
IN REGULATIONS**

- ITEM #5 CalWORKs 60-Month Time Limit Proce-
dures
[ORD #1201-23]

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held April 17, 2002, as follows:

April 17, 2002
Office Building #9
744 P Street, Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The CDSS will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify CDSS at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by telefax to the address/number listed below. All comments must be received by 5:00 p.m. on April 17, 2002.

The CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related

to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice and the proposed regulations are also available online at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which CDSS considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Anthony J. Velasquez, Chief
Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
TELEFAX: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Manual of Policy and Procedures (MPP), Eligibility and Assistance Standards (EAS), Chapter 40-100 (General), Section 40-107 (County Responsibility); Chapter 42-300 (General Time Limit Requirements), Section 42-301 (General Time Limit Requirements for Adults), Section 42-302 (60-Month Time Limit Requirements for Adults); Chapter 44-100 (Income), Section 44-133 (Treatment of Income—CalWORKs); Chapter 82-800 (Assistance Unit), Section 82-832 (Excluded Persons), and Section 82-833 (Timed-Out Adults).

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Assembly Bill (AB) 1542 (Chapter 270, Statutes of 1997) established the California Work Opportunity and Responsibility to Kids (CalWORKs) program. The statute added sections 11454 and 11454.5 to the Welfare and Institutions Code, which mandate a 60-month time limit on the receipt of CalWORKs cash aid by adults with specific exceptions. Welfare and Institutions Code Section 11454(e) allows adults who meet certain criteria to receive aid beyond the 60-month time limit. Welfare and Institutions Code Section 11454.5(b) allows months of aid to be exempt

from the 60-month time limit. These regulations establish the process by which CalWORKs recipients can claim exemptions to the 60-month time limit and require counties to inform recipients of their remaining time on aid at specific intervals and upon request. These regulations ensure that recipients are informed of their rights and responsibilities under time limit requirements, consistent with general informing in Manual of Policy and Procedures (MPP) Section 40-173. These regulations allow time limit requirements to be applied consistently statewide.

Federal welfare reform provides that no person may receive Temporary Assistance for Needy Families (TANF) assistance for more than sixty months. CalWORKs time limits were established to implement federal time-limited aid. The time limit is intended to provide an incentive to cash aid recipients to achieve self-sufficiency through employment before the time limit expires. Although TANF funding is only available after sixty months for hardship cases, California law establishes a "safety net" which provides limited aid beyond the sixty-month TANF time limit. The limited aid provided under California law is aid for only the children of adults whose time limit has expired.

Current regulations do not specify how safety net benefits are calculated. Recipients who have been continuously on aid since the time limits were established will soon reach their sixty-month time limits. These regulations are necessary to specify how safety net aid will be calculated when the sixty-month time limit is reached.

COST ESTIMATE

1. Costs or Savings to State Agencies: None
2. Costs to Local Agencies or School Districts: None
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: None

LOCAL MANDATE STATEMENT

These regulations impose a mandate upon county welfare departments, but not school districts. There are no state-mandated local costs in these regulations which require reimbursement under Section 17500 et seq. of the Government Code because the CalWORKs program provides for offsetting savings to local agencies that result in no net costs to local agencies, within the meaning of Section 17580 of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting

businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

The CDSS has determined that the proposed regulations will not affect small businesses.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Sections 10553, 10554, 10604 and 11369. Subject regulations implement and make specific Sections 10063, 10553, 10554, 10604, 11008.14, 11254, 11450, 11452, 11453, 11486, 18937, 18940, and 11371, Welfare and Institutions Code; 45 CFR 205.50(a)(1)(i)(A); 45 CFR 233.20(a)(1)(i); 45 CFR 233.20(a)(3)(ii)(C), (a)(3)(vi)(B), (a)(3)(xiv), (a)(3)(xiv)(B), and (xviii); 45 CFR 233.50(A)(c); and 45 CFR 233.90(c)(2)(i); Family Support Administration Action Transmittal 91-15 (FSA-AT-91-15), dated April 23, 1991; and Omnibus Budget Reconciliation Act (OBRA) of 1990; U.S. Department of Health and Human Services Federal Action Transmittal No. FSA-AT-91-4 dated February 25, 1991; *Simpson v. Hegstrom*, 873 F.2d 1294 (1989); *Ortega v. Anderson*, Case No. 746632-0 (Alameda Superior Court) July 11, 1995; and Federal Register, Vol. 58, No. 182, pages 49218-20, dated September 22, 1993; 8 U.S.C. 1631; and 42 U.S.C. 602(a)(39).

**CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION**

Contact Person: Anthony J. Velasquez
(916) 657-2586
Backup: Steve Smalley
(916) 657-2586

**CDSS REPRESENTATIVE REGARDING
SUBSTANCE OF THE PROPOSED REGULATION**

Program Contact: Charissa Miguelino
(916) 657-3665
Backup: Randy Shiroy
(916) 654-1527

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code Section 11346.4.

**AGENDA ITEMS FOR THIS PUBLIC HEARING
April 17, 2002**

- ITEM #1 ORD #0801-17—Automated External Defibrillation Regulations
- ITEM #2 ORD #1201-22—California Food Assistance Program
- ITEM #3 ORD #0801-16—Incidental Medical Services Clean-up Regulations
- ITEM #4 ORD #1201-24 AB 1692 CalWORKs Amendments
- ITEM #5 ORD #1201-23 CalWORKs 60-Month Time Limit Procedures

GENERAL PUBLIC INTEREST

**DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING**

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into the State contracts. The prospective contractors signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these

prospective contracts in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P. O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P. O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians &
Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P. O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1

CESA NO. 2080-2002-002-06

Project: North Baja Pipeline Project
Location: Riverside and Imperial Counties
Notifier: North Baja Pipeline, LLC

BACKGROUND

On January 15, 2002, the U.S. Fish and Wildlife Service ("Service") issued Biological Opinion No. FWS-IMP-2398 for the North Baja Pipeline Project (NBP), describing the project actions and setting forth measures to mitigate impacts to the desert tortoise (*Gopherus agassizii*) and its habitat. On January 18, 2002, the Director of the Department of Fish and Game ("Department") received a notice from John Cassady, NBP Manager, seeking a determination pursuant to Fish and Game Code section 2080.1 that the federal biological opinion is consistent with the California Endangered Species Act ("CESA," Fish and Game Code section 2050 *et seq.*).

The Notifier proposes to construct, operate, and maintain a new natural gas transmission pipeline system in Arizona and California. The project will involve the construction and operation of 80.2 miles of 36-inch and 30-inch diameter pipeline, a new compressor station, two new meter stations, and related roads and facilities in Riverside and Imperial Counties, California. The pipeline will be installed using conventional trenching, horizontal directional drilling, and blasting. Construction will require a temporary easement 5–80 feet in width. The project's actual use of workspace within its construction right-of-way may vary. Impacts include trenching across washes, wetlands, drains, and canals. General impacts to the Colorado River and the All American Canal will be avoided by directional drilling. Staging areas for entry and exit areas for directional drilling and boring under all crossings will be located outside the drainage area and any associated riparian vegetation. The project will impact 766 acres of desert tortoise habitat. The Notifier has executed a streambed alteration agreement with the Department pursuant to section 1603 of the Fish and Game Code to address project impacts on streams.

DETERMINATIONS

After reviewing the above-referenced biological opinion, the Department has determined that the Federal Biological Opinion No. FWS-IMP-2398 is consistent with CESA because the project and measures described in that opinion meet the conditions set forth in Fish and Game Code Section 2081(b) and (c) for authorization of incidental take of species

protected under CESA. The biological opinion's measures to mitigate project impacts to the desert tortoise include: 1) the Notifier's acquisition of 2,589 acres of desert tortoise habitat to compensate for the long-term loss of 766 acres of impacted desert tortoise habitat, of which 1,657 acres and 932 acres would be deeded to the Bureau of Land Management and the Department, respectively; 2) a \$200.00 per acre management endowment and a \$95.00 per acre enhancement fee to be paid to the Department for the 2,589 acres of compensation lands; 3) on-site biological supervision and monitoring conducted by a qualified biologist to minimize take of desert tortoises during all project-related activities; and 4) the handling of tortoises using only procedures described in *Guidelines for Handling Desert Tortoises During Construction Projects* (DTC 1994, revised 1996).

Pursuant to Section 2080.1 of the Fish and Game Code, with this determination, North Baja Pipeline, LLC, will not need to obtain authorization pursuant to CESA for take of the desert tortoise in carrying out the project, provided the proposed project is constructed, operated, and maintained as it is described in the biological opinion. A new consistency determination or a CESA incidental take authorization must be obtained from the Department if the project as described in the biological opinion, including mitigation or conservation requirements set forth in the biological opinion, is changed after issuance of that opinion by the Service.

FISH AND GAME COMMISSION

NOTICE OF FINDINGS

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Fish and Game Code Section 2074.2, the California Fish and Game Commission, at its December 7, 2001, meeting in Long Beach, rejected the petition filed by the Center for Biological Diversity to list the California tiger salamander (*Amytostoma californiense*) as an endangered species. At this meeting, the Commission also announced its intention to ratify its findings at its February 8, 2002, meeting in Sacramento.

NOTICE IS ALSO GIVEN that, at its February 8, 2002, formal meeting in Sacramento, the Commission adopted the following formal findings outlining the reasons for the rejection of the petition.

I

STATUTORY REQUIREMENTS

Fish and Game Code Section 2074.2 provides that the Commission shall consider the petition, the Department of Fish and Game's written report and comments received in determining whether or not a petition provides sufficient information to indicate that

the petitioned action may be warranted. The requisite standard of proof was that stated by the Court in *Natural Resources Defense Council v. Fish and Game Commission* (1994) 28 Cal. App. 4th 1104, 1125.

In the above-mentioned case, the Court determined that “the section 2074.2 phrase ‘petition provides sufficient information to indicate that the petitioned action may be warranted’ means that amount of information, when considered in light of the Department’s written report and the comments received, that would lead a reasonable person to conclude that there is substantial possibility the requested listing could occur” In this context, “substantial possibility” means more than a “reasonable possibility” or a “fair argument” that listing is warranted, but it is less than a standard that it is “more likely than not” that listing “will” occur (Id. at 1125).

The Court also stated that “this ‘substantial possibility’ standard for the ‘may be warranted’ language is applied in a quasi-adjudicatory format where the Commission takes evidence for and against listing, weighs it, and determines in its discretion what is essentially a question of fact” (Id. at 1125). As the Court concluded, the decision-making process the Commission must follow includes:

“a taking of evidence for and against listing in a public quasi-adjudicatory setting, a weighing of that evidence, and a Commission discretion to determine essentially a question of fact based on that evidence. This process, in other words, contemplates a meaningful opportunity to present evidence contrary to the petition and a meaningful consideration of that evidence” (Id. at 1126).

Therefore, in determining whether listing “may be warranted,” the Commission must consider not only the petition and the report prepared on the petition by the Department, but all of the evidence introduced in the proceedings, and it must also weigh and evaluate all of that evidence. In making its determinations, the Commission must decide in light of the entire record.

II

REASON FOR FINDING

Fish and Game Code Section 2072.3 provides there are several factors to be considered in determining whether a petition should be accepted. The factors of the section most relevant to this finding are:

- (1) Population trend;
- (2) Population abundance; and
- (3) The degree and immediacy of threat.

1. Population trend:

The petition indicated that historically, the California tiger salamander was found throughout large portions of the Central Valley of California from the southern San Joaquin Valley into the southern

Sacramento Valley north of the Sacramento River Delta. The species was also found in the lower foothills along the eastern side of the Central Valley and in the foothills of the Coast Range. The species’ historic range followed the low elevation grassland-oak woodland plant communities of the valleys and foothills.

The petition also indicated that within this very large area, it is presumed that the California tiger salamander generally occurred wherever suitable habitat was present, with some limited exceptions. However, insufficient information was presented in the petition and in public comments on population trends. The petition provided a table with the current range as identified by Shaffer, et al. (1993), but also stated that it is not possible to submit more detailed topographic maps at this time, nor would it be appropriate to publicize specific locality data that has not already been published because the threat of vandalism to this species is quite high.

It was presented to the Commission that the petition erroneously relied almost exclusively on the Shaffer, et al. (1993) report for its evaluation of the range-wide status of the California tiger salamander. However, the Shaffer study’s primary objective was to collect genetic material, not to validate the extent of the California tiger salamander range. The study did not comply with the Department’s protocol for species specific population studies. The study utilized sampling methods that tested for California tiger salamander larvae in a breeding pond only once during a given year. While this method of data collection was well suited for the primary objective of the Shaffer study, i.e., collecting samples of genetic material, it is a questionable technique for a valid population assessment of a species like the California tiger salamander that is often not detected in a single visit, even in high quality habitat known to be occupied. This type of sampling has been described as producing more false negatives than other methods. Because the Shaffer study’s sampling procedures have a high bias toward absence which is not accounted for in its data analysis, the petition provides a species population status report that is potentially inaccurate and misleading.

The best available data for range-wide status assessment is the information provided the Commission at the hearing from survey reports and environmental documents detailing the distribution and status of the California tiger salamander, especially those based on the work of biologists who performed multiple visit surveys. This information provides credible evidence that the California tiger salamander population trend is not

necessarily declining; and, therefore, is not endangered throughout all or a significant portion of its range.

While the petition argues that California is undergoing a loss of "native" habitat for the California tiger salamander through loss of vernal pools and other similar wetlands, the petition fails to provide any credible information or evidence that the California tiger salamander either presently, or historically, occupies much of this hypothetical or presumptive habitat. Based on only several rough criteria involving the existence of seasonal wetlands and an associated/adjacent upland, the petition extrapolates the existence of hundreds of thousands of acres of historical California tiger salamander habitat within California. The petition then proceeds to argue that unspecified developmental projects and other activities within this presumptive area of "habitat" are adversely impacting such habitat. Little or no evidence was presented by petitioners actually correlating the existence of the California tiger salamander within the majority of this so-called habitat, or more specifically, within the actual "habitat" allegedly being impacted. A clear example of this correlation problem was presented by the petition in its reference to man-made stockponds as breeding habitat for the California tiger salamander. The petition points out that man-made stockponds are important habitat for survival of the California tiger salamander. The petitioners agree that the California tiger salamander adapts easily to the use of the stockponds as breeding habitat. However, the petition then fails to analyze the degree to which habitat provided by stockponds offsets the hypothesized loss of natural breeding pools because no information was presented as to actual loss of known breeding habitat, actual gains in breeding habitat from the addition of stockponds, and actual use of either habitat type by the California tiger salamander. Population trend arguments made only on land use trend information are justifiably unpersuasive without significant efforts to correlate the presence of the California tiger salamander on the lands undergoing a change in use.

2. Population abundance:

The petition provides no actual data on California tiger salamander population abundance. Instead, the petition claims that, based on the massive documented decrease in the potential habitat of the California tiger salamander, it is obvious that the average overall population must have also declined. It also states that there are difficulties involved in estimating population numbers for a species like the California tiger salamander. The petition

indicates that because amphibian populations naturally undergo large fluctuations in population size as a result of environmental conditions such as rainfall and fire, it would be difficult, if not impossible, to obtain accurate population counts.

The petitioners stress that it is more important to note that, in general, the number of California tiger salamanders must have been drastically reduced due to the fact that the species cannot now be found in much of its hypothetical range and appears pushed into narrow bands of habitat. However, the petition does not provide sufficient scientific information related to the actual abundance of the California tiger salamander. There is currently no sufficient estimate of population abundance for the species as a whole, nor is there an adequate estimate of historical population abundance. Without an accurate assessment of the current population abundance of a species, it is difficult, if not impossible, to establish population trends for that species, and any determination of threat to the species is purely guesswork.

The petition downplays the significance of absence of population data by focusing instead on the threats facing the California tiger salamander of "loss of habitat". While habitat loss can often be an indicator of population declines and threat to the species, this petition's information about habitat loss was not compelling enough to overcome the other deficiencies in the data and analysis presented by the petitioners. The evidence in this petition of supposed habitat loss alone, given the other deficiencies described in these findings, is not sufficient for the Commission to reach the conclusion that the petitioned action may be warranted. With some effort on the part of the petitioners, there are a number of surveys and methodologies available that could provide more accurate scientific information on abundance and population trends of the California tiger salamander.

Fish and Game Code Section 2072.3 clearly states that the petition must provide information about species' abundance. This petition clearly is deficient in providing sufficient scientific information on both the historic abundance, as well as current abundance of the California tiger salamander.

3. The degree and immediacy of threat:

The problems caused by the petition's lack of population abundance and trend information are compounded within the petition's discussion of purported threats to the California tiger salamander. Without an estimate of population, no realistic assessment of the scope of the threat to the species is possible. The petition also fails to state clearly

the effects of not listing the California tiger salamander. Most listings of other species by the Commission were clearly documented by utilizing population size to show dramatic and measurable declines in population caused by the lack of protections. Some listings of species looked to small population size initially to show the need for immediate protection of the species.

The primary threat claimed in this petition is California tiger salamander habitat destruction from conversion of areas suitable for California tiger salamander habitat to urban and agricultural lands. Instead of demonstrating actual threats to the survival of the California tiger salamander, or to known California tiger salamander habitat, the petitioners list a series of projects that they say may have impacts to California tiger salamander survival. There are no numbers, no facts and no actual demonstration of harm, much less a threat to survival of the species in the listing of the projects. The petition only offers vague generalities about the scale of the threat to the California tiger salamander, with no indication of how the species would be impacted.

This analysis is also flawed because no attempt was made to correlate any possible project sites with potential California tiger salamander habitat, much less where California tiger salamander presence has been documented. The list includes projects which are unlikely to affect the California tiger salamander or its habitat, such as the construction of a High Occupancy Vehicle lane in the center median of an existing freeway, revision of a county animal confinement ordinance, and an aquatic weed control program in the Delta. It appears that the petitioners simply assume that any project in any city or county in which the California tiger salamander has been found to exist will destroy California tiger salamander habitat and, by implication, the California tiger salamander.

III

FINAL DETERMINATION BY COMMISSION

The Commission has weighed all the scientific and general evidence in the petition, the Department's written report, and written and oral comments received from numerous members of the public, and, based upon that weighing of the evidence, the Commission has determined that, although there may be some reason for concern, the petition provides insufficient evidence to persuade the Commission that the petitioned action may be warranted (Fish and Game Code Section 2074.2). In making this determination the Commission finds that the petition does not

provide sufficient information in the categories of population trend, abundance, and degree and immediacy of threat to find that the petitioned action may be warranted. The petition focuses on one or two areas of the state, i.e., Sonoma County, but does not provide sufficient information range-wide regarding populations trends and abundance and immediacy of threat for the Commission to adequately assess the threat and conclude that there was a substantial possibility that the species will qualify for listing. The Commission further suggests the petitioner correct the deficiencies of the petition and resubmit it to the Commission for further consideration.

RULEMAKING PETITION DECISIONS

BOARD OF PRISON TERMS

February 15, 2002

Roland B. Crampton, Jr.
E84790—Bldg.-5-BB2-6
P.O. Box 715071
Represa, CA 95671

Re: Petition to Amend or Repeal California Code of Regulations, Title 15 Sections 2400 through 2411

Dear Mr. Crampton:

Pursuant to Government Code Section 11340.6, the Board of Prison Terms (Board) hereby responds to your petition to amend or repeal California Code of Regulations, title 15, sections 2400 through 2411.

In a proceeding entitled *In re Sims* (Sacramento Superior Court No. 99F06604), the Court determined that the Board's reference to the term "attempted first degree murder" was not an alternate reference to an attempted willful, deliberate, and premeditated murder. The Superior Court order is consistent with the California Supreme Court's opinion entitled *People v. Bright* (1996) 12 Cal.4th 642, where the Court determined that the portion of Penal Code section 664(a) providing for life imprisonment for an attempted willful, deliberate, and premeditated murder is a sentence enhancement and does not create the crime of attempted first degree murder.

On January 9, 2001, the Board submitted amendments to the Office of Administrative Law (OAL) to repeal the term "first degree" as it applies to attempted

willful, deliberate, and premeditated murder from its regulations. The regulations were approved by OAL on February 16, 2001, and became effective on March 18, 2001.

Due to the above, the Board hereby denies petitioner's request to amend sections 2400 through 2411 of title 15 of the Code of Regulations as the amendments pursuant to this petition were previously approved and are currently in effect.

The agency contact person for this matter is Lori Manieri, who may be contacted at the address shown above, by telephone at (916) 445-5277, or by facsimile at (916) 322-3475. Interested persons may obtain a copy of the Petition upon request.

Very truly yours,

JOHN P. WINN
Chief Counsel

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

BOARD OF GOVERNORS, CALIFORNIA COMMUNITY COLLEGES Standards of Scholarship

The Board of Governors, California Community Colleges, is amending section 55753, and adopting sections 55753.5, and 55753.7, title 5, California Code of Regulations. These changes are exempt from review by the Office of Administrative Law pursuant to Section 70901.5 of the Education Code.

Title 5
California Code of Regulations
ADOPT: 55753.5, 55753.7 AMEND: 55753
Filed 02/19/02
Effective 07/01/02
Agency Contact:
Renee Brouillette (916) 322-4145

BOARD OF PSYCHOLOGY

Training in Alcoholism/Chemical Dependency Detection and Treatment

The Board of Psychology is renumbering the captioned sections.

Title 16
California Code of Regulations
AMEND: 1387.6, 1387.7, 1387.8
Filed 02/19/02
Effective 03/21/02
Agency Contact: Kathy Bradbury (916) 263-0712

BOARD OF PSYCHOLOGY

Replace Oral Examination

The regulatory action is the Certificate of Compliance for the emergency regulatory action that deleted the oral examination for licensure and replaced it with the California Jurisprudence and Professional Ethics Examination and amended licensing fees. (Prior OAL File: 01-1214-02E.)

Title 16
California Code of Regulations
AMEND: 1388, 1388.6, 1389, 1392, 1397.63
REPEAL: 1388.5
Filed 02/20/02
Effective 02/20/02
Agency Contact: Kathy Bradbury (916) 263-0712

BUREAU OF AUTOMOTIVE REPAIR

Automatic Transmission

This action updates the Bureau's consumer protection rule defining terms and establishing minimum standards for the servicing of vehicle automatic transmissions.

Title 16
California Code of Regulations
AMEND: 3361.1
Filed 02/13/02
Effective 03/15/02
Agency Contact: James Allen (916) 255-4300

CALIFORNIA HORSE RACING BOARD

Colors and Number

This rulemaking action authorizes advertising on jockey attire, owner silks, and track saddlecloths during a horserace, establishes size and location requirements for advertisements, and requires a copy of the advertisement signage to be submitted for review, for compliance with the size and location requirements, to the stewards at the track where the advertisement will be worn before the horse is entered to race.

Title 4
California Code of Regulations
AMEND: 1691

Filed 02/13/02
Effective 02/13/02
Agency Contact: Pat Noble (916) 263-6033

DEPARTMENT OF FOOD AND AGRICULTURE
Red Imported Fire Ant Eradication Area

This regulatory action adds Sacramento County to the red imported fire ant eradication area. (Previous OAL file # 01-1012-04E)

Title 3
California Code of Regulations
AMEND: 3591.16(a)
Filed 02/20/02
Effective 03/22/02
Agency Contact:
Barbara J. Hass (916) 654-1017

DEPARTMENT OF JUSTICE
Conflict of Interest Code

The Department of Justice is amending its conflict of interest code found at title 11, section 20, California Code of Regulations. The subject changes were approved for filing by the Fair Political Practices Commission on December 6, 2001.

Title 11
California Code of Regulations
AMEND: 20
Filed 02/19/02
Effective 03/01/02
Agency Contact: Ted Prim (916) 324-5481

DEPARTMENT OF MANAGED HEALTH CARE
Acts of War Exclusions

This emergency action (LS 35-01) concerns health care service plan exclusions of coverage based upon acts of war. Customary "Acts of War" exclusions contained in plan contracts violate the Knox-Keene Act; health care service plans must provide all basic health care services to their enrollees.

Title 28
California Code of Regulations
ADOPT: 1300.67.05
Filed 02/14/02
Effective 02/14/02
Agency Contact:
Lyn Amor Macaraeg (916) 322-9727

DEPARTMENT OF MOTOR VEHICLES
Clean Air Vehicle Decals

This rulemaking establishes an application process to obtain decals for inherently low emission vehicles which will allow owners of these vehicles to use high occupancy traffic lanes.

Title 13
California Code of Regulations
ADOPT: 156.00
Filed 02/19/02

Effective 03/21/02
Agency Contact:
Bonnie DeWatney (916) 657-8954

DEPARTMENT OF TOXIC SUBSTANCES
CONTROL

Groundwater Remediation Loan Program

This emergency readoption establishes the Groundwater Remediation Loan Program, that provides loans to local agencies to address groundwater contamination problems.

Title 22
California Code of Regulations
ADOPT: 68300, 68301, 68302, 68303, 68304, 68305, 68306, 68307, 68308, 68309
Filed 02/13/02
Effective 02/13/02
Agency Contact: Joan Ferber (916) 322-6409

EMERGENCY MEDICAL SERVICES AUTHORITY
Revision of Form (EMSA-CRI (1/93)) to be Incorporated By Reference

The Emergency Medical Services Authority is removing the classification EMT-P (Paramedic) from the Form "Negative Certification Action Report" due to the fact that the EMT-P's disciplinary actions are solely governed by the State licensure process wherein the EMT-I and EMT-II are principally governed by the local EMSA Agency (Health and Safety Code sections 1797.194 and 1798.200). Changes to the subject form were based on intent language found in the Final Statement of Reasons for File No. 99-1221-08R, filed with the Secretary of State on 2-2-2000, operative 3-3-2000.

Title 22
California Code of Regulations
AMEND: 100209 (c)
Filed 02/20/02
Effective 02/20/02
Agency Contact: Sean Trask (916) 322-4336

FAIR POLITICAL PRACTICES COMMISSION
Lifting of Voluntary Expenditure Limits

The Fair Political Practices Commission is repealing and adopting section 18543 of title 2, California Code of Regulations, pertaining to lifting of voluntary expenditure limits. The Office of Administrative Law has filed the above regulatory action with the Secretary of State in accordance with the decision of the Third District Court of Appeal in *Fair Political Practices Commission v. Office of Administrative Law, et al.*, 3 Civil CO 10924, dated April 27, 1992.

Title 2
California Code of Regulations
ADOPT: 18543 REPEAL: 18543

Filed 02/19/02
Effective 02/26/02
Agency Contact: Scott Tocher (916) 322-5660

FAIR POLITICAL PRACTICES COMMISSION
Spokesperson Disclosure

This action concerns Proposition 34 Spokesperson Disclosure. The regulation is being submitted to OAL for filing with the Secretary of State and printing only.

Title 2
California Code of Regulations
ADOPT: 18450.11
Filed 02/19/02
Effective 03/21/02
Agency Contact: Scott Tocher (916) 322-5660

FAIR POLITICAL PRACTICES COMMISSION
Personal Loans

This regulatory action concerns Proposition 34—Personal Loans. The action is submitted to OAL for filing with the Secretary of State and printing only.

Title 2
California Code of Regulations
ADOPT: 18530.8
Filed 02/19/02
Effective 03/21/02
Agency Contact:
Holly Armstrong (916) 322-5660

FAIR POLITICAL PRACTICES COMMISSION
Candidate Controlled Committee

This regulatory action concerns Candidate Controlled Committees. The filing is exempt from OAL review and is being submitted for filing with the Secretary of State and printing only.

Title 2
California Code of Regulations
ADOPT: 18404.1 REPEAL: 18404.2
Filed 02/14/02
Effective 02/15/02
Agency Contact:
Holly Armstrong (916) 322-5660

INDUSTRIAL MEDICAL COUNCIL
QME Fees

This emergency regulatory action permits the IMC to rebate \$110 of the QME's licensing fee if the QME completes and returns the exam validation survey.

Title 8
California Code of Regulations
AMEND: 17
Filed 02/14/02
Effective 02/14/02
Agency Contact:
James D. Fisher (650) 737-2049

STATE WATER RESOURCES CONTROL BOARD
Removal San Lorenzo Numeric Nitrate Objective

On June 2, 2000, the Central Coast Regional Water Quality Control Board adopted Resolution No. 00-001 amending the Water Quality Control Plan for the Central Coast Basin (Basin Plan). The amendment removes the numeric nitrate objective for the San Lorenzo River from Chapter Three, page III-14 in the Basin Plan. It is felt that water quality will continue to be protected by the narrative Basin Plan taste and odor and biostimulatory effects objectives.

Title 23
California Code of Regulations
AMEND: 3923
Filed 02/13/02
Effective 02/13/02
Agency Contact: Ling Tseng (916) 341-5558

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN OCTOBER 17, 2001 TO
FEBRUARY 20, 2002**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

01/08/02 AMEND: 1402, 1414, 1437

Title 2

02/19/02 ADOPT: 18543 REPEAL: 18543
02/19/02 ADOPT: 18450.11
02/19/02 ADOPT: 18530.8
02/14/02 ADOPT: 18404.1 REPEAL: 18404.2
01/31/02 ADOPT: 18421.4
01/30/02 AMEND: 55300
01/24/02 ADOPT: 18450.3, 18450.4, 18450.5
AMEND: 18402
01/24/02 ADOPT: 58500
01/22/02 AMEND: 18706
01/16/02 ADOPT: 18539, 18550
01/16/02 AMEND: 18232, 18702.1, 18705.5, 18708
12/27/01 AMEND: 18428
12/26/01 AMEND: 2554(b)(4), 2555(a)(1)
12/21/01 AMEND: 1859.2, 1859.81
12/20/01 AMEND: 2300(b)
12/20/01 AMEND: 45100

12/18/01 AMEND: 2541(c), 2541(d)
 12/12/01 ADOPT: 1896.300, 1896.310, 1896.320,
 1896.330, 1896.340, 1896.350, 1896.360,
 1896.370
 11/27/01 ADOPT: 599.911, 599.912, 599.913
 11/26/01 ADOPT: 18540
 11/16/01 ADOPT: 18539.2
 11/06/01 ADOPT: 18536 REPEAL: 18536
 10/31/01 AMEND: 599.936
 10/31/01 AMEND: 599.911, 599.912, 599.913
 10/29/01 ADOPT: 18543
 10/29/01 ADOPT: 18542
 10/18/01 ADOPT: 18404.2

Title 3

02/20/02 AMEND: 3591.16(a)
 02/07/02 AMEND: 3591.12 (a)
 02/04/02 AMEND: 1392.1, 1392.2, 1392.4,
 1392.9.1
 02/04/02 AMEND: 3591.13 (a)
 01/30/02 ADOPT: 2681, 2799 AMEND: 2675,
 2676, 2694, 2695, 2697, 2701, 2734,
 2773.1, 2773.5, 2774, 2774.5, 2775,
 2778, 2782, 2783, 2783.5, 2788, 2789,
 2790, 2790.5, 2793, 2794, 2796, 2798,
 2801, 2802
 01/14/02 AMEND: 3406 (b)
 01/14/02 AMEND: 3423 (b)
 01/08/02 AMEND: 576.1
 01/04/02 AMEND: 3591.16 (a)
 12/27/01 AMEND: 2
 12/26/01 ADOPT: 950, 951, 952, 953, 954, 955
 AMEND: 900.1, 901, 927, 930, 931
 12/26/01 AMEND: 6650, 6654, 6656
 12/20/01 ADOPT: 7010
 12/14/01 AMEND: 3700 (a),(b),(c)
 12/12/01 AMEND: 3591.2(a)
 12/05/01 ADOPT: 1301, 1301.1, 1301.2, 1301.3,
 1301.4, 1301.5, 1301.6, 1301.7, 1301.8,
 1301.9
 12/04/01 AMEND: 3591.12(a)
 11/28/01 AMEND: 1359, 1392.4, 1436.30 RE-
 PEAL: 1359.1, 1360, 1361, 1362, 1363
 11/28/01 AMEND: 3430(b)
 11/27/01 AMEND: 6252, 6256
 11/26/01 AMEND: 1380.19
 10/25/01 ADOPT: 480.9 AMEND: 300 (c)(1)
 10/24/01 ADOPT: 1301, 1301.1, 1301.2, 1301.3,
 1301.4, 1301.5, 1301.6, 1301.7, 1301.8,
 1301.9
 10/19/01 ADOPT: 2302 AMEND: 2303

Title 4

02/13/02 AMEND: 1691
 02/06/02 AMEND: 1858
 01/31/02 AMEND: 1467
 01/28/02 AMEND: 1844
 01/18/02 ADOPT: 2081
 01/11/02 ADOPT: 4160, 4161, 4162, 4263, 4164,
 4165, 4166, 4167, 4168, 4169, 4170,
 4171 REPEAL: 4160, 4161, 4162, 4164,
 4167, 4168, 4169, 4170, 4171, 4172,
 4173, 4174, 4175
 01/10/02 ADOPT: 2078
 01/07/02 ADOPT: 2072
 01/07/02 ADOPT: 2071
 01/07/02 ADOPT: 2076
 01/07/02 ADOPT: 2073
 01/07/02 ADOPT: 2082
 01/04/02 ADOPT: 2083
 01/03/02 ADOPT: 2080
 01/03/02 ADOPT: 2079
 01/03/02 ADOPT: 2074
 01/03/02 ADOPT: 2077
 01/03/02 ADOPT: 2075
 01/03/02 ADOPT: 2070
 12/12/01 REPEAL: 143.4
 12/11/01 AMEND: 1979
 12/10/01 AMEND: 1969
 11/29/01 ADOPT: 12130
 11/20/01 AMEND: 376, 377
 11/19/01 ADOPT: 10300, 10302, 10305, 10310,
 10315, 10317, 10320, 10322, 10325,
 10326, 10327, 10328, 10330, 10335,
 10337 AMEND: 10317(c)
 11/19/01 ADOPT: 12100, 12102, 12104, 12106,
 12108, 12110, 12120
 11/01/01 AMEND: 401, 403
 10/29/01 AMEND: 8070(e)

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02/19/02 ADOPT: 55753.5, 55753.7 AMEND:
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 01/24/02 AMEND: 11530, 11531
 01/24/02 AMEND: 43880, 43881, 43882, 43883,
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 01/08/02 AMEND: 1031, 1032, 1033, 1034, 1035,
 1036, 1037, 1038, 1039
 01/08/02 REPEAL: 11820, 11822, 11823, 11827,
 11828, 11829, 11831, 11832, 11833,
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 01/07/02 AMEND: 73000, 73010, 73100, 73110,
 73120, 73130, 73140, 73150, 73160,
 73165, 73170, 73180, 73190, 73200,
 73210, 73230, 73240, 73260, 73270,
 73280, 73290, 73300, 73310, 73320,
 73330, 73340, 73350, 73360, 73380,
 73390, 73400, 73410, 73420, 73430,
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01/07/02 AMEND: 42713
 12/27/01 ADOPT: 31000, 31001, 31003, 31004, 31005, 31006, 31007
 12/26/01 AMEND: 80487
 12/21/01 ADOPT: 31000, 31001, 31002, 31003, 31004, 31005, 31006, 31007
 12/21/01 ADOPT: 1215, 1216, 1217, 1217.5, 1218, 1219, 1219.5
 12/18/01 AMEND: 30950, 30951, 30951.1, 30952, 30953, 30954, 30955, 30956, 30957, 30958, 30959
 12/14/01 AMEND: 41802 REPEAL: 41802.1, 41913
 12/12/01 AMEND: 80225
 12/05/01 ADOPT: 20430, 20432, 20434, 20436, 20438, 20440, 20442, 20444
 12/03/01 AMEND: 55316.5, 55317, 28003.1, 58009
 11/28/01 AMEND: 43810
 11/27/01 AMEND: 42933
 11/26/01 AMEND: 22000
 11/19/01 AMEND: 80026, 80027
 11/15/01 AMEND: 1032(i)
 11/06/01 AMEND: 18302
 11/05/01 REPEAL: 18140, 18141, 18142, 18143, 18144, 18145, 18146, 18147, 18148, 18149, 18150, 18151, 18152, 18153, 18154, 18155, 18156, 18157, 18158, 18159, 18160, 18161, 18162, 18163, 18164, 18165, 18166, 18167, 18168, 18169, 18170, 18171, 18172, 18173, 18174
 10/26/01 ADOPT: 18400, 18405, 18406, 18407, 18408, 18409, 18409.5, 18410, 18411, 18412, 18413, 18414, 18415, 18416, 18417, 18418, 18419, 18420, 18421, 18422, 18423, 18424, 18425, 18426, 18427, 18428, 18429, 18430, 18431, 18432, 18433, 18434
 10/22/01 AMEND: 74000, 74002, 74004, 74006, 74008, 74010, 74014, 74016, 74018, 74020, 74030, 74040, 74050, 74100, 74120, 74130, 74140, 74150, 74160, 74170, 74180, 74190, 74200, 74300, 74310, 74320, 75000, 75020, 75030, 75040, 75100, 75110, 75120, 75130

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12/11/01 ADOPT: 236
 11/27/01 ADOPT: 212.5

Title 8

02/14/02 AMEND: 17
 02/08/02 AMEND: 3641, 3648
 01/30/02 ADOPT: New Appendix D AMEND: 450, 453, 471, 475, 477, 494 REPEAL: 486, 487

01/17/02 AMEND: 5155
 01/17/02 ADOPT: 206, 207 AMEND: 201, 205, 208, 212, 212.01, 212.2, 212.3, 212.4, 228, 229, 230, 231, 230.1, 230.2, 234.2
 01/15/02 ADOPT: 14300.1, 14300.2, 14300.03, 14300.04, 14300.05, 14300.06, 14300.07, 14300.08, 14300.09, 14300.10, 14300.11, 14300.12, 14300.13, 14300.14, 14300.15, 14300.16, 14300.17, 14300.18, 14300.19, 14300.20, 14300.21, 14300.22, 14300.23, 14300.24, 14300.25
 01/15/02 ADOPT: 17201, 17202, 17203, 17204, 17205, 17206, 17207, 17208, 17209, 17210, 17211, 17212, 17220, 17221, 17222, 17223, 17224, 17225, 17226, 17227, 17228, 17229, 17230, 17231, 17232, 17234, 17235, 17236, 17237, 17240, 17241, 17242, 17243, 17244, 17245
 01/04/02 ADOPT: 11170 AMEND: 11160
 01/03/02 AMEND: 3472, 4884, 4885, 4886, 4907, 4924, 4965, 4966, 4968
 12/31/01 AMEND: 9792.1
 12/26/01 AMEND: 1532.1
 12/24/01 AMEND: 31100
 12/04/01 ADOPT: 32015, 32016, 32325, 32603, 32604, 6000, 60010, 60020, 60030, 60035, 60040, 60050, 60070, 61000, 61005, 61010, 61020, 61030, 61040, 61050, 61055, 61060, 61065, 61070, 61072, 61075, 61080, 61090, 61100, 61105, 61110, 61115, 61120, 61125, 61130
 11/29/01 AMEND: 5031(c)(3)
 11/19/01 AMEND: 341.15
 11/08/01 AMEND: 3340(c) and (d)
 11/02/01 AMEND: 15212
 10/30/01 ADOPT: 344.5, 344.6, 344.7, 344.8, 344.9, 344.10, 344.11, 344.12, 344.13, 344.14, 344.15, 344.16, 344.17 AMEND: Re-number 344.10 to 344.18
 10/29/01 AMEND: 65
 10/24/01 AMEND: 6249, 6251, 6260, 6262, 6270, 6272, 6281, 6282, 6283, 6290, 6295, 6328, 6329, Appendix A
 10/23/01 AMEND: 1698(e)(1)(2)

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01/17/02 ADOPT: 9533 AMEND: 9500, 9505, 9510, 9515, 9517, 9520, 9525, 9530, 9532, 9535, 9540, 9545
 12/12/01 ADOPT: 9500, 9505, 9510, 9515, 9517, 9520, 9525, 9530, 9532, 9533, 9535, 9540, 9545
 12/10/01 AMEND: 7050, 7051, 7053, 7054, 7056, 7057

Title 10

02/11/02 AMEND: 5002
 02/11/02 AMEND: 4019
 02/11/02 AMEND: 10.3154
 02/07/02 AMEND: 260.102.19, 260.140.41,
 260.140.42, 260.140.45, 260.140.46
 01/31/02 ADOPT: 2130, 2130.1, 2130.2, 2130.3,
 2130.4, 2130.5, 2130.6, 2130.7, 2130.8
 01/31/02 ADOPT: 2192.1
 01/10/02 AMEND: 2318.6, 2353.1
 01/09/02 AMEND: 2248.31, 2248.32, 2248.35,
 2248.40, 2248.41, 2248.42, and 2248.47
 01/08/02 AMEND: 5460, 5461, 5462, 5463, 5464,
 5465
 12/31/01 ADOPT: 2695.30
 12/31/01 ADOPT: 1729, 1741.5, 1950.302
 AMEND: 1741.5
 12/26/01 AMEND: 2698.70, 2698.71
 12/26/01 ADOPT: 2278, 2278.1, 2278.2, 2278.3,
 2278.4, 2278.5
 10/31/01 AMEND: 4081, 4081.5
 10/23/01 AMEND: 2699.6619, 2699.6629

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02/19/02 AMEND: 20
 01/14/02 AMEND: 1005
 01/09/02 AMEND: 1081
 12/31/01 AMEND: 3000, 3001, 3003, 3007
 12/05/01 AMEND: 1005
 10/29/01 ADOPT: 410, 411, 415, 416, 417, 418,
 419, 420, 421, 422, 423, 424, 425, 426
 10/17/01 AMEND: 1005, 1018

Title 13

02/19/02 ADOPT: 156.00
 02/05/02 AMEND: 160.00, 170.00
 01/30/02 AMEND: 553.70
 01/18/02 AMEND: 599
 01/10/02 AMEND: 50.45 REPEAL: 50.40
 10/30/01 AMEND: 553
 10/24/01 AMEND: 1200, 1201, 1213.2
 10/17/01 AMEND: 20.04

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02/04/02 AMEND: 17979
 01/16/02 AMEND: 17943(b)(26)
 01/10/02 ADOPT: 2.10, 5.60, 28.59 AMEND:
 1.24, 2.06, 4.00, 4.15, 5.00, 5.05, 5.15,
 5.20, 5.35, 5.40, 5.75, 7.00, 7.50, 8.00,
 27.60, 27.65, 27.82, 28.27, 28.54, 28.55,
 29.15, 40 REPEAL: 2.01, 2.02, 2.03,
 2.04, 2.07, 2.10, 2.13, 2.14, 5.70, 41,
 41.5, 42, 42.5
 01/09/02 ADOPT: 14021, 14022, 14023, 14024,
 14025, 14026, 14027, 14028, 14029,
 14030, 14031, 14032
 12/31/01 ADOPT: 749.1
 12/20/01 AMEND: 2.00

12/19/01 ADOPT: 180.4
 12/17/01 AMEND: 120
 12/13/01 AMEND: 670.5
 12/11/01 ADOPT: 17367, 17368, 17369, 17370.1,
 17370.2, 18225
 11/29/01 ADOPT: 1057, 1057.1, 1057.2, 1057.3,
 1057.4, 1057.5, 1058, 1058.1, 1058.2,
 1058.3, 1058.4, 1058.5
 11/20/01 AMEND: 895.1, 898, 898.2, 914.8
 [934.8, 954.8], 916 [936, 956], 916.2
 [936.2, 956.2], 916.9 [936.9, 956.9],
 916.11 [936.11, 956.11], 916.12 [936.12,
 956.12], 923.3 [943.3, 963.3], 923.9
 [943.9, 963.9]
 11/16/01 AMEND: 1038, 1104.1
 11/08/01 AMEND: 150.16
 11/07/01 AMEND: 1037.5
 11/01/01 ADOPT: 17211, 17211.1, 17211.2,
 17211.3, 17211.4, 17211.5, 17211.6,
 17211.7, 17211.8, 17211.9
 10/31/01 AMEND: 163, 163.5, 164
 10/31/01 AMEND: 300(a)
 10/30/01 ADOPT: 1059
 10/25/01 AMEND: 165, 165.5
 10/23/01 AMEND: 550, 551, 552
 10/17/01 AMEND: 27.82, 28.54, 28.55

Title 15

01/31/02 AMEND: 3041.3
 01/09/02 ADOPT: 4742, 4743, 4744, 4745, 4746,
 4747 AMEND: 4730, 4732, 4733, 4734,
 4735, 4736, 4737, 4739, 4740
 01/08/02 REPEAL: 3074
 11/29/01 ADOPT: 4746.5
 11/27/01 AMEND: 6045.2(e)(2)(G)
 11/20/01 ADOPT: 2646.1 AMEND: 2646
 10/23/01 AMEND: 3375.2, 3378

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02/20/02 AMEND: 1388, 1388.6, 1389, 1392,
 1397.63 REPEAL: 1388.5
 02/19/02 AMEND: 1387.6, 1387.7, 1387.8
 02/13/02 AMEND: 3361.1
 02/11/02 ADOPT: 2085.4
 02/04/02 AMEND: 1399.157
 02/04/02 ADOPT: 2085, 2085.1, 2085.2, 2085.3,
 2085.4, 2085.5, 2085.6, 2085.7, 2085.8,
 2085.9, 2085.10, 2085.11, 2085.12,
 2085.13 AMEND: 2070
 01/31/02 AMEND: 411
 01/31/02 ADOPT: 1399.698
 01/28/02 AMEND: 1531
 01/18/02 AMEND: 1391.7
 01/14/02 ADOPT: 980.1 AMEND: 974
 01/14/02 ADOPT: 1711

12/19/01 AMEND: 1388, 1388.6, 1389, 1392,
1397.63 REPEAL: 1388.5
12/18/01 AMEND: 1397.61, 1397.64, 1397.65
12/17/01 AMEND: 1088
12/17/01 ADOPT: 2412 AMEND: 2418 REPEAL:
2411 (a)(1)(A)
12/07/01 ADOPT: 386
12/04/01 AMEND: 1887.3
11/28/01 ADOPT: 872, 872.1
11/27/01 AMEND: 3340.16.5
11/20/01 ADOPT: 2450
10/31/01 ADOPT: 890
10/23/01 ADOPT: 1999.5 AMEND: 1970, 1970.6
10/19/01 ADOPT: 1357.1, 1357.2, 1357.3, 1357.4,
1357.5, 1357.6
10/18/01 AMEND: 2420

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12/28/01 AMEND: 6508
11/19/01 ADOPT: 37000, 37020, 37025, 37100
11/19/01 AMEND: 57310, 57332, 57530
11/14/01 ADOPT: 33001, 33002, 33003, 33004,
3005, 33006, 33007, 33008, 33009,
33010, 33011, 33012, 33013, 33014,
33015, 33025 AMEND: 33020, 33030,
33040 REPEAL: 33001, 33010
11/07/01 AMEND: 60201
11/05/01 ADOPT: 2638 AMEND: 2500, 2502,
2505, 2551, 2552, 2553, 2596, 2614,
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10/29/01 ADOPT: 30437 AMEND: 30424, 30425,
30427, 30427.2, 30436, 30447
10/29/01 ADOPT: 30400.5, 30400.60, 30403.5,
30403.8, 30406
10/25/01 ADOPT: 54327.2 AMEND: 54302,
54327, 54327.1, 56002, 56093, 58651

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01/16/02 ADOPT: 4063.5, 4098 AMEND: 4018,
4021, 4022, 4023, 4026, 4027, 4034,
4047, 4055, 4056, 4057, 4058, 4059,
4060, 4062, 4063, 4064, 4065, 4080,
4081, 4091, 4092 REPEAL: 4028, 4067,
4079, 4082
01/10/02 ADOPT: 29
01/08/02 AMEND: 1620
01/07/02 AMEND: 122.5
12/24/01 AMEND: 17000.30
12/24/01 ADOPT: 17951-6 AMEND: 17951-4
12/17/01 AMEND: 1642
12/14/01 ADOPT: 138
12/06/01 AMEND: 1660
12/04/01 AMEND: 1661
11/20/01 AMEND: 19513
11/08/01 ADOPT: 206
11/01/01 AMEND: 1598
11/01/01 AMEND: 1617

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02/08/02 AMEND: 2900, 2910, 2915, 2940, 2945,
2955, 2970, 2980, 2990
12/28/01 AMEND: 981.3
12/27/01 ADOPT: 565.1, 567.1, 567.2, 567.3,
567.4, 567.5, 567.6, 567.7, 567.8, 573,
575 AMEND: 550, 550.2, 557.1, 557.3,
557.4, 557.5, 557.6, 557.8, 557.9, 557.12,
557.13, 557.14, 557.16, 557.18, 557.19,
557.20, 557.21, 557.22, 557.23, 560,
560.1, 560.2, 560.3

Title 20

01/16/02 AMEND: 201

Title 21

02/05/02 AMEND: 7101, 7102, 7111, 7114, 7116
12/04/01 AMEND: 7000

Title 22

02/20/02 AMEND: 100209 (c)
02/13/02 ADOPT: 68300, 68301, 68302, 68303,
68304, 68305, 68306, 68307, 68308,
68309
02/11/02 ADOPT: 110413, 110550, 113100,
113200, 113300 REPEAL: 12-104.1, 12-
104.432, 12-221
02/08/02 AMEND: 66260.10, 66261.9, 66262.11,
66264.1, 66265.1, 66268.1, 66270.1,
66273.1, 66273.2, 66273.3, 66273.4,
66273.5, 66273.6, 66273.7, 66273.8,
66273.9, 66273.10, 66273.11, 66273.12,
66273.13, 66273.14, 66273.15, 66273.16,
66273.17, 66273.18, 66273.19
01/30/02 ADOPT: 67450.40, 67450.41, 67450.42,
67450.43, 67450.44, 67450.45, 67450.46,
67450.47, 67450.48, 67450.49, 67450.50
AMEND: 66262.20, 66270.6
01/24/02 REPEAL: Repeal the language "(See
Section 3901.1, Retraining Benefits Defi-
nitions)" below Article 1.5. Retraining
Benefits.
01/17/02 ADOPT: 84400, 84401, 84422, 84461,
84465, 84468.1, 84468.2, 84468.4, 84478
REPEAL: 84001, 84022, 84061, 84063,
84065, 84300, 84322, 84322.1, 84322.2,
84361, 84365, 84365.5, 84368.3, 84369
01/08/02 ADOPT: 7630, 7632, 7632.1, 7632.3,
7632.5, 7634, 7634.1, 7634.3, 7634.5,
7636, 7636.1, 7636.3, 7636.5, 7637.7,
7636.9, 7638, 7638.1, 7638.3, 7638.5,
7638.7, 7638.9, 7638.11, 7638.13
12/31/01 AMEND: 66260.10, 66262.12, 66263.40,
66268.7 REPEAL: 66263.42

12/19/01 AMEND: 5151 (c), 5151 (e), 51518 (b), 51521 (i), 51527 (b)

12/18/01 ADOPT: 11000, 110042, 110046, 110088, 110099, 110129, 110135, 110147, 110148, 110150, 110164, 110182, 110184, 110186, 110194, 110200, 110220, 110224, 110230, 110252, 110261, 110289, 110341, 110410, 110431, 110436, 110445, 110456, 110474, 110478, 110479

11/30/01 ADOPT: 66273.6, 66273.80-66273.90
AMEND: 66261.9, 66273.1, 66273.8, 66273.9

11/13/01 ADOPT: 64860

11/08/01 ADOPT: 66250, 66250.1, 66250.2

11/08/01 ADOPT: 67900.1, 67900.2, 67900.3, 67900.4, 67900.5, 67900.6, 67900.7, 67900.8, 67900.9, 67900.10, 67900.11, 67900.12

11/06/01 AMEND: 66264.140, 66264.143, 66264.145, 66264.147, 66265.140, 66265.143, 66265.145, 66265.147

11/06/01 AMEND: 4408, 4409, 4414

11/02/01 ADOPT: 66261.9, 66273.1, 66273.2, 66273.3, 66273.4, 66273.5, 66273.6, 66273.7, 66273.8, 66273.9, 66273.10, 66273.11, 66273.12, 66273.13, 66273.14, 66273.15, 66273.16, 66273.17, 66273.18, 66273.19, 66273.20, 66273.30, 66273.31, 66273.32, 66273.33

11/02/01 ADOPT: 100901, 100902, 100903, 100904, 100904.5 AMEND: 100900

10/24/01 AMEND: 12000

Title 22, MPP

11/08/01 AMEND: 84110, 85002, 87102

10/25/01 ADOPT: 85081, 87593 AMEND: 85001, 87101

Title 23

02/13/02 AMEND: 3923

01/03/02 AMEND: 3904

12/28/01 AMEND: 451.1, 451.4, 451.5

11/27/01 AMEND: 3952

Title 25

01/08/02 ADOPT: 7300, 7301, 7302, 7303, 7304, 7305, 7306, 7307, 7308, 7309, 7310, 7311, 7312, 7313, 7314, 7315, 7316, 7317, 7318, 7319, 7320, 7321, 7322, 7323, 7324, 7325, 7326, 7327, 7328, 7329, 7330, 7331, 7332, 7333, 7334, 7335, 7336

01/03/02 ADOPT: 1302, 1316, 1317, 1318, 1319
AMEND: 1300, 1304, 1306, 1310

12/19/01 AMEND: 8202, 8203, 8212, 8212.1

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10/24/01 AMEND: 15240

Title 28

02/14/02 ADOPT: 1300.67.05

12/27/01 ADOPT: 1300.41.8

12/12/01 ADOPT: 1000

Title MPP

01/30/02 ADOPT: 69-209, 69-210 AMEND: 69-201, 69-202, 69-203, 69-204, 69-205, 69-206, 69-207, 69-208, 69-211, 69-212, 69-213, 6-214, 69-215, 69-216, 69-217, 69-301 REPEAL: 69-210, 69-221

01/23/02 ADOPT: 33-135 AMEND: 33-120, 33-510, 33-805

01/14/02 ADOPT: 63-016 AMEND: 63-102, 63-300, 63-504, 63-801, 63-802, 63-804

12/11/01 AMEND: 44-314, 82-518

11/29/01 ADOPT: 44-302 AMEND: 25-301, 25-302, 25-303, 25-304, 25-305, 25-306, 25-310.3, 25-330.9, 25-506, 44-304, 44-305, 44-325, 44-327, 80-310

**OAL REGULATORY
DETERMINATIONS**

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

2002 OAL Determination No. 2

February 20, 2002

Requested by:

DIJON YOUNG

Concerning:

DEPARTMENT OF CORRECTIONS—Hearing officer's findings in a State of California Rules Violation Report from an inmate disciplinary proceeding

Determination issued pursuant to Government Code section 11340.5; California Code of Regulations, title 1, section 121 et seq.

ISSUE

Do the following findings in a hearing officer's decision constitute "regulations" as defined in Government Code section 11342.600 that are required to be adopted pursuant to the rulemaking provisions of the Administrative Procedure Act: (A) a finding that certain misconduct is a serious rule violation under section 3315(a)(2)(B) of title 15 of the California Code of Regulations, (B) a finding that the misconduct is a

“Division F” offense, and (C) a characterization of the misconduct in the hearing officer’s decision as “overfamiliarity with staff”?¹

CONCLUSION

The findings of the hearing officer that Mr. Young’s misconduct was a serious rule violation under section 3315(a)(2)(B) of title 15 of the California Code of Regulations and that the misconduct was a “Division F” offense, and the characterization of that misconduct as “overfamiliarity with staff” did not create “regulations” which are required to be adopted pursuant to the Administrative Procedure Act. The findings in this administrative adjudication did not create rules of general application.

BACKGROUND

At the time of his determination request, Dijon Young was an inmate at Pelican Bay State Prison. Mr. Young asserts in his request for determination that findings made by a hearing officer in a Department of Corrections (“Department”) Rules Violation Report (“CDC Form 115”) created “regulations” which have not been adopted pursuant to the Administrative Procedure Act, in violation of Government Code section 11340.5.

The hearing officer’s findings followed a hearing conducted pursuant to Department regulations governing inmate discipline. A disciplinary proceeding is initiated when a staff member reports inmate misconduct believed to be a violation of law or not minor in nature on a CDC Form 115. (See Cal. Code Regs., tit. 15, sec. 3312(a)(3).)² The CDC Form 115 submitted by Mr. Young to support his request for determination describes the misconduct, as reported by a staff member, which lead to the findings as follows:

“On Tuesday . . . , I received an Inmate Request for Interview from inmate YOUNG, . . . , former inmate clerk in the Main Kitchen. The Request indicated that YOUNG was in possession of some personal information regarding me that I may have lost. He also wrote that I should contact him at the A Yard Canteen, his current job assignment. On

Thursday . . . , [another inmate] handed me an envelope which contained another Request For Interview from YOUNG. This request also stated that I should contact him regarding a possible loss of personal information. . . . I contacted YOUNG via telephone at his worksite. He reiterated that he had knowledge of personal information regarding me that may be ‘floating’ around. At no time, however, did YOUNG specify what this information was. YOUNG said he would contact me again when he was able to decipher the actual information. It should be noted that while YOUNG was assigned to the Main Kitchen, he had approached me saying that he had some important information and would speak with me the next day. This did not occur, however, as YOUNG was unassigned from the Main Kitchen. I had no further occasion to speak with YOUNG until I received the Request For Interview.”

Department staff originally characterized this misconduct on the CDC Form 115 as the specific act of “bribery,” subsequently modified the characterization to “unlawful influence,” and ultimately found the misconduct to be a “potential breach of institution security.”³ After the administrative hearing, at which Mr. Young testified, the hearing officer made the following finding, which is the basis of Mr. Young’s request for determination:

“FINDING: Guilty of the Div. F-3 (CCR 3315(a)(2)(B)[I]) offense OVERFAMILIARITY WITH STAFF. Not guilty of the Div. C (6) offense BRIBERY. Bribery is an attempt to influence someone in a position of authority with a gift or something of value. The purpose of the bribe must be influencing that public authority. An explicit offer is not required. It is sufficient if any reasonable person would understand from the overall circumstances that a bribe was being offered or implied. While Overfamiliarity [sic] with staff is not explicitly listed under CCR 3315 as a serious offense, it is justified as an offense by the fact that such misconduct potentially breaches institutional security as well as causing disruptions of facility operations and creating a threat to staff. This offense requires evidence that the inmate attempted to develop an overly familiar or personal relationship with a staff member under circumstances that imply or suggest that compromise of that staff member or

¹ The request for determination, additional comments, and a rebuttal to the Department of Corrections’ response were filed by Dijon Young, B-59175, Pelican Bay State Prison, P.O. Box 7500/A4-232, Crescent City, California 95531-7500. The Department of Corrections’ response was submitted by E. A. Mitchell, Interim Assistant Director, Office of Correctional Planning, Department of Corrections, P.O. Box 942883, Sacramento, CA 94283-0001. The request was given a file number of 00-010. This determination may be cited as “**2002 OAL Determination No. 2.**”

² All subsequent “section” references in this determination are references to regulations in title 15 of the California Code of Regulations, unless specified otherwise.

³ We express no opinion as to whether this shifting characterization of the reported misconduct violates any applicable provision of law other than Government Code section 11340.5, as our determination is limited to whether the findings issued, utilized, enforced, or attempted to enforce a “regulation” which must be adopted pursuant to the Administrative Procedure Act.

institutional security procedures was a potential result. [The finding then goes on to describe the evidence upon which it is based.]”⁴

Mr. Young asserts that the hearing officer’s finding (quoted above) creates a “regulation” which expands the language of section 3315(a)(2)(B) in three ways: (A) it transforms section 3315(a)(2)(B) into a chargeable offense; (B) it classifies the inmate’s misconduct as a “Division F” offense; and (C) it creates a new offense, “overfamiliarity with staff.”

In its response, the Department denies that the offense “overfamiliarity with staff” has been created. The Department asserts that Mr. Young was found guilty of a section 3315(a)(2)(B) serious rule violation, specifically “Breach of or hazard to facility security.”⁵ The Department also explains that the hearing officer’s statement in his finding that “overfamiliarity with staff is not explicitly listed under CCR section 3315 as a serious offense” is a “written aside” that only “superficially appears to contradict” the citation of section 3315(a)(2)(B) as the basis of the finding against Mr. Young.⁶

ANALYSIS

The determination of whether the hearing officer’s findings challenged by Mr. Young are “regulations” subject to the Administrative Procedure Act (“APA”; chap. 3.5 (commencing with sec. 11340), pt. 1, div. 3, tit. 2, Gov. Code) depends on: (1) whether the APA is

⁴ With regard to the disposition of the matter, the CDC Form 115 indicates: “No credit forfeiture has been assessed because time constraints have been exceeded. In the hearing, YOUNG was ordered to avoid any and all contact with the Reporting Employee for any reason at any time. Appeal rights were explained. YOUNG was referred to CCR sec. 3084.1 and following for additional information on appeal procedures.”

Mr. Young appealed the hearing officer’s findings, and submitted as additional comments on his request for determination a Director’s Level Appeal Decision on the findings. In the appeal, Mr. Young argued that the hearing officer did not have the authority to find him guilty of a lesser offense of overfamiliarity with staff because it is not specifically listed as a serious offense in section 3315, and no legitimate authority identifies overfamiliarity with staff as a punishable offense. The Director’s Level Appeal Decision denied the appeal explaining: “CCR 3315(f)(3) provides the authority for the [hearing officer] to find the appellant guilty of an included offense. Reduction of the original charge was appropriate. The specific act is a considerable breach of institution security as staff have the opportunity to introduce contraband into the institution that may seriously threaten facility security and safety of persons. Overfamiliarity with staff breeds a willingness to ignore critical security measures. The [hearing officer’s] finding is consistent with the evidence and permissible under cited regulations.” Mr. Young argues that this explanation in effect adopts the offense “overfamiliarity with staff” as a rule which has statewide application. We disagree for the reasons explained in our analysis.

⁵ Department’s response, p. 3.

⁶ *Ibid.*

generally applicable to “regulations” issued by the Department, (2) whether the challenged findings are “regulations” within the meaning of Government Code section 11342.600, and (3) whether the challenged findings fall within any recognized exemption from APA requirements.

- (1) The Department is a “state agency” in the executive branch of state government, and is thus subject to APA rulemaking requirements, unless expressly exempted by statute. The term “state agency” includes, for APA rulemaking purposes, “every state office, officer, department, division, bureau, board, and commission.” (Gov. Code, sec. 11000.) The rulemaking requirements of the APA do not apply to agencies in the judicial or legislative branches of state government. (Gov. Code, sec. 11340.9, subd. (a).) Generally, all state agencies in the executive branch not expressly exempted by statute must comply with the APA when engaged in rulemaking. (*Winzler & Kelly v. Department of Industrial Relations* (1981) 121 Cal.App.3d 120, 126–128, 174 Cal.Rptr. 744, 746–747; Gov. Code, secs. 11342.520 and 11346.) (See *Poschman v. Dumke* (1973) 31 Cal.App.3d 932, 942, 107 Cal.Rptr. 596, 603 (an agency created by the Legislature is subject to and must comply with the APA).) Moreover, applicability of the APA to the Department’s rulemaking activities is specifically confirmed by subdivision (a) of Penal Code section 5058, which provides, as relevant:

“The director [of the Department of Corrections] may prescribe and amend rules and regulations for the administration of the prisons The rules and regulations shall be promulgated and filed *pursuant to [the APA]* [Emphasis added.]”

Thus, APA rulemaking requirements generally apply to the Department.

- (2) Subdivision (a) of section 11340.5 of the Government Code generally prohibits state agencies from making any use of any rule which satisfies the APA definition of “regulation” without complying with the procedural requirements of the APA. The subdivision states:

“No state agency shall issue, utilize, enforce, or attempt to enforce *any* guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a [“regulation”] as defined in Section 11342.600, *unless* the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA]. [Emphasis added.]”

Section 11342.600 of the Government Code defines “regulation” as follows:

“ . . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. [Emphasis added.]”

Under Government Code section 11342.600, a challenged rule⁷ is a “regulation” for these APA purposes if (1) the state agency rule is *either* a rule or standard of general application *or* a modification or supplement to such a rule and (2) the challenged rule has been adopted by the agency to *either* implement, interpret, or make specific the law enforced or administered by the agency, *or* govern the agency’s procedure. (See *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 440, 268 Cal.Rptr. 244, 251; ⁸ *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497, 272 Cal.Rptr. 886, 890.)

For a challenged rule to be a “standard of general application,” it need not apply to all citizens of the state. It is sufficient if the challenged rule applies to all members of a class, kind, or order. (*Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 630, 167 Cal.Rptr. 552, 556; see *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323–324 (a standard of general application applies to all members of any open class).) A standard of general application is by nature prospective in operation. (See, e.g., *Best v. California Apprenticeship Council* (1987) 193 Cal.App.3d 1448, 1456, 240 Cal.Rptr. 1, 5.)

We consider each of Mr. Young’s three assertions in turn.

- (A) Mr. Young asserts that the hearing officer’s finding transforms section 3315(a)(2)(B) into a chargeable offense, arguing that section 3315 does not itself create a chargeable offense, but has as its only purpose the classification of offenses created by other regulations as either “administrative” or “serious.”

We cannot agree with this assertion. The hearing officer’s finding that the requester’s violation of section 3315(a)(2)(B) is a serious rule violation does not itself create a new rule of general application. Section 3315(a)(2)(B) is part of a series of regulations that set out a disciplinary procedure for inmate

misconduct. Under the disciplinary procedure, staff must report inmate misconduct believed to be a violation of law, or not minor in nature on a CDC Form 115. (Sec. 3312(a)(3).) Each CDC Form 115 must then be classified as “administrative” or “serious” pursuant to sections 3314 and 3315, respectively. Different procedural requirements and different authorized dispositions are tied to each classification. Section 3315(a) provides:

“(a) Inmate misconduct reported on a CDC Form 115 shall be classified serious if:

- (1) It is an offense punishable as a misdemeanor not specified as administrative in section 3314(a)(3) or is a felony, whether or not prosecution is undertaken.

(2) It involves any one or more of the following circumstances:

(A) Use of force or violence against another person.

(B) A breach of or hazard to facility security.

(C) A serious disruption of facility operations.

(D) The introduction or possession of controlled substances or dangerous contraband.

(E) An attempt or threat to commit any act listed in (A) through (D), coupled with a present ability to carry out the threat or attempt if not prevented from doing so.

(3) Serious rule violations include but are not limited to: [The rule then specifically lists 24 serious rule violations, an example being: ‘Harassment of another person, group, or entity either directly or indirectly through the use of the mail or other means.’] [Emphasis added.]”

Mr. Young’s assertion that the finding expands the language of section 3315(a)(2)(B) by transforming it into a chargeable offense is based upon the flawed premise that section 3315(a)(2)(B) does not itself establish a rule for inmate behavior, which if violated may result in a disciplinary action.

The language of the section belies this assertion. Section 3315(a)(2)(B) requires inmate misconduct reported on a CDC Form 115 to be classified as a serious rule violation if the acts involve a “breach of or hazard to facility security.” The rule of behavior implicit in this provision is that any inmate acts that involve a breach of or hazard to facility security are prohibited. Section 3315(f)(3) then establishes disciplinary consequences that may be imposed if an inmate is found guilty of a serious rule violation, or guilty of an included serious rule violation. Thus, the regulation itself establishes that it is a chargeable offense to engage in any act that involves a breach of or a hazard to facility security.

This reading of the regulation is consistent with the language in section 3315(a)(2)(E) that makes an attempt to commit “any act listed in (A) through (D)”

⁷ A “challenged rule” as used in this determination means the policy or procedure that is the subject of the request for an OAL determination.

⁸ OAL notes that a 1996 California Supreme Court case stated that it “disapproved” of *Grier* in part. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 577, 59 Cal.Rptr.2d 186, 198. *Grier*, however, is still good law for these purposes.

of section 3315 a serious rule violation. The reading is also confirmed by the provision in section 3315(a)(3) which states that serious rule violations are not limited to those listed in the regulation. Consequently, the hearing officer's finding that the requester's violation of section 3315(a)(2)(B) is a serious rule violation is a finding that the existing regulation applies to Mr. Young's actions. Thus, the hearing officer's finding did not create a rule of general application for purposes of the APA.

(B) Mr. Young next asserts that the classification of his offense as a "Division F" offense expands the language of section 3315 so as to create a regulation that must be adopted pursuant to the APA.

We do not agree with this assertion. Existing regulations provide for the classification of certain offenses as "Division F" offenses. Section 3315(f)(3) provides that upon completion of the fact-finding portion of the disciplinary hearing, the inmate may be found "[g]uilty as charged or guilty of an included serious rule violation and assessed a credit forfeiture pursuant to section 3323." Section 3323 sets out a disciplinary credit forfeiture schedule for offenses which it categorizes as "Division 'A'" through "Division 'F'" offenses. For each division, section 3323 lists the offenses to which the division applies and specifies the number of days of credit forfeiture that may be imposed if an inmate is found guilty of an offense listed under the division.

With regard to "Division F" offenses, section 3323(h) provides that any serious rule violation listed in section 3315, other than gambling in a community-access facility or a late return to a community access facility, that is not a crime is a "Division 'F'" offense, which may be assessed a credit forfeiture of 0-30 days. Because a violation of section 3315(a)(2)(B) is a serious rule violation, existing regulation section 3323(h) makes a violation of section 3315(a)(2)(B) a "Division F" offense. Thus, the hearing officer's classification of the offense of which Mr. Young was found guilty as a "Division F" offense did not create a new rule of general application.

(C) Mr. Young also asserts that the description of the misconduct in the hearing officer's finding as "overfamiliarity with staff" and the explanation that this offense ". . . requires evidence that the inmate attempted to develop an overly familiar or personal relationship with a staff member under circumstances that imply or suggest that compromise of that staff member or institutional security

procedures was a potential result" ⁹ creates a regulation which expands the language of section 3315(a)(2)(B).

We do not agree with this assertion. Section 3315(a)(2)(B) specifically provides that inmate misconduct must be classified as serious misconduct if it involves "[a] breach of or hazard to facility security." The hearing officer's characterization of the reported behavior as "overfamiliarity with staff" and his description of required evidence were no more than shorthand descriptions or characterizations of behavior which, in the hearing officer's judgment, constituted "[a] breach of or hazard to facility security." Nothing in the APA prohibits the Department from making case-by-case determinations as to whether the actions of an inmate constitute "[a] breach of or hazard to facility security." The hearing officer's findings here determined the rights and duties of one named person, Mr. Young. These findings are in the nature of an individual adjudication rather than a rulemaking. A rulemaking creates rules of general application for prospective application in making decisions. That did not occur here.

Because we have determined that the findings of the hearing officer in this instance did not create a rule of general application, there is no need to determine whether any rule implements, interprets, or makes specific the law enforced or administered by the agency, or whether an express statutory exemption applies.

Thus, the findings of the hearing officer did not create "regulations" that are required to be adopted pursuant to the APA.

DATE: February 20, 2002

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⁹ CDC Rules Violation Report, p. 3, 5/4/99.

